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Complete Collection

OF

STATE TRIALS

AND

PROCEEDINGS

FOR

HIGH TREASON

AND

OTHER CRIMES AND MISDEMEANORS

FROM THE

THE FOURTH YEAR OF THE REIGN OF KING EDWARD II.

TO THE

Seventh Year of the Reign of King George III.

Complete Collection

OF

PROCEEDINGS

AND

DEBATES

In the Fourth Year of the Reign of King RICHARD II.

A NEW PREFACE,

By FRANCIS HARGRAVE, Esq.

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Complete Collection

OF

STATE-TRIALS,

AND

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FOR

HIGH-TREASON,

AND OTHER

CRIMES and MISDEMEANOURS;

THE FOURTH EDITION,

COMMENCING WITH

The Eleventh Year of the Reign of KING RICHARD II.

AND ENDING WITH

The Sixteenth Year of the Reign of KING GEORGE III.

WITH

TWO ALPHABETICAL TABLES TO THE WHOLE.

TO WHICH IS PREFIXED,

A NEW PREFACE,

By FRANCIS HARGRAVE, ESQUIRE.

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MR. *Topham*, Serjeant, attending the Houſe, having by his Petition complained, That he had been a great Sufferer by ſeveral Proſecutions at Law for executing the Orders of the Houſe; and that having pleaded thoſe Orders to the Juriſdiction of the Court of King's-Bench, his Pleas had not been allowed, but Judgment was given againſt him: The Houſe referred the Examination and Conſideration of this Matter to the Committee of Privileges. Accordingly the Committee met and examined the Matter.

Sabbati 6° *Julii*, 1 *Will. & Mar.*

Col. *Byrch* reported the Fact as it appeared to the Committee, with the Opinion of the Committee thereupon, with which the Houſe agreed, in theſe Words:

Reſolved,

"That the Houſe doth agree with the Committee, That the Judgment "given by the Court of King's-Bench in *Eaſter* Term, 34 *Car.* II. "*Regis*, upon the Plea of *John Topham* (at the Suit of *John Jay*) to the "Juriſdiction of that Court; and alſo the Judgments given againſt the "ſaid Mr. *Topham*, at the Suit of *Samuel Verdon*, *John Hiliard*, *Thomas* "*Staples*, *Richard Blyth*, *John Nelſon*, *Thomas Herbert*, *Nathaniel Rea*"*ding*, and *Richard Harneage*, are illegal, and a Violation of the Privi"leges of Parliament, and pernicious to the Rights of Parliament."

The Houſe being informed, That Sir *Francis Pemberton* and Sir *Thomas Jones* were Judges of the King's-Bench at that Time, ordered them to attend upon *Wedneſday* next following.

Mercurii 10 *Julii*, 1689.

The Houſe being informed, That Sir *Francis Pemberton* and Sir *Thomas Jones* attended, purſuant to the Order of the Houſe; Sir *Francis Pemberton* was firſt brought in, and Mr. Speaker ſpoke to him to this Effect:

Mr. Speaker. The Houſe has been acquainted, there was an Action brought in the King's-Bench in *Eaſter* Term, 34 *Car.* II. by one *Jay* againſt Serjeant *Topham*. To which Action he pleaded the Juriſdiction of this Houſe; and that it proceeded to a Demurrer, and the Plea was overruled by you as Chief-Juſtice; ſo the Houſe has ſent for you to know upon what Ground you did it.

Sir *Francis Pemberton*. Sir, I know nothing of this Action, I have been out of the Court now ſix Years this Vacation. If I ſaw the Pleadings, it may be I might give you ſome Account of it, but I cannot remember ſo many thouſand Actions as were brought at that Time. But if you will let me know what the Charge is, I do not doubt but I can give you a good Account of it. You ſay, Sir, he pleaded the Juriſdiction of this Houſe.

Mr. Speaker. That is, there was a Plea to the Juriſdiction of the Court of King's-Bench, That it was done by Order of this Houſe; ſo it concerns the Juriſdiction of this Houſe.

Sir *Francis Pemberton*. This is quite new to me, for I know not what I was ſent for. You were pleaſed to ſummon me to attend, but I did not know for what, nor do I remember any ſuch Action brought by *Jay*; I remember only an Action was brought by † *Verdon* againſt *Topham*. And I remember there was a Motion made to us for a new Trial in the Caſe, where there was 500*l.* Damages given. And we did give them a new Trial, for we thought it monſtrous and unreaſonable Damages.

Mr. Speaker. There were ſeveral Actions brought, but that which the Houſe would be informed of, is the Action that was between *John Jay* and *John Topham*.

Sir *Francis Pemberton*. Under Favour, I can ſay nothing to this Action; but this I can ſay, if the Defendant ſhould plead he did arreſt him by the Command of this Houſe, and ſhould plead that to the Juriſdiction of the Court of King's-Bench (I can ſay nothing to this particular Action, but) I think, with Submiſſion, I can ſatisfy you, that ſuch a Plea ought to be over-ruled, and I take it, the Law is very clear as to this; but as to what is laid to my Charge, with reſpect to this particular Action, if you pleaſe to give me ſome Time to look into the Records of the Court.

Mr. Speaker. The Houſe will conſider of it, if you pleaſe to withdraw, and then give you their Reſolution.

Sir Francis Pemberton *withdraws*.

Sir Thomas Jones *brought in*.

Mr. Speaker. Sir *Thomas Jones*, the Occaſion the Houſe ſent for you is this: They have been acquainted, that in the Time of King *Charles* the Second, in the thirty-fourth Year of his Reign, there was an Action brought by one *Jay* againſt Mr. *Topham*, that then was, and now is, Serjeant of the Houſe of Commons. To which he pleaded, That what he did was by Order of the Houſe, and this he pleaded to the Juriſdiction of the Court of King's-Bench at that Time; they deſire to know if you gave the Judgment, and upon what Reaſon?

Sir *Thomas Jones*. 'Tis ſo long ago I do not remember it, 'tis above ſeven Years ago; and I had not Notice at all of the Cauſe I was commanded to attend you upon; whether I did give any ſuch Judgment or no, it will appear by the Record itſelf.

Mr. Speaker. We have examined the Officers, and they give us an Account, That Sir *Francis Pemberton* was Chief Juſtice, and you another Judge then.

Sir *Thomas Jones*. I was a Judge of the Court at that Time, but I cannot certainly ſay, we did give Judgment to over-rule the Plea; I hope, if we did, it was according to Law.

Mr. Speaker. Well, Sir, you may withdraw, if you pleaſe.

Sir Thomas Jones *withdraws*.

Sir Francis Pemberton *brought in again*.

Mr. Speaker. Sir *Francis Pemberton*, the Houſe took Notice when you were in before, you ſaid, when an Order of this Houſe was pleaded to the Juriſdiction of the King's-Bench, you conceived by the Law it ought to be over-ruled; and that you could give thoſe Reaſons that would ſatisfy the Houſe it was ſo; they expect you ſhould give them now.

Sir *Francis Pemberton*. Mr. *Speaker*, as to this Queſtion concerning this particular Caſe I know nothing, I know not what the Pleading was.

Mr. Speaker. The Houſe does not expect any Thing of your Anſwer as to this particular Caſe; but you ſeemed to make your Aſſertion general, and therefore they deſire to hear what you can ſay as to your general Aſſertion.

Sir *Francis Pemberton*. To ſatisfy the Houſe of all together, I would deſire to look into this particular Caſe; for I do not know whether I was Judge or not then: If they will give me ſome Time, I will give them an Account of the whole.

Mr. Speaker. The Houſe expects to have ſome Account now of what you ſaid, that a Plea to the Juriſdiction of the Court of King's-Bench ought to be over-ruled.

Sir *Francis Pemberton*. If they pleaſe, ſince they charge me with this particular Caſe, I will anſwer to the whole together.

Mr. Speaker. Well, Sir, if you pleaſe to withdraw.

Sir Francis Pemberton *withdraws*.

He is brought in again.

Mr. Speaker. Sir *Francis Pemberton*, the Houſe did take Notice that you did affirm here, that if an Order of this Houſe was pleaded to the Juriſdiction of the Court of King's-Bench, that it ought to be over-ruled, and that you take the Law to be clearly ſo, and that you thought you could ſatisfy the Houſe in that Point. This is a general Aſſertion, and they require nothing as to the particular Caſe; but they do require you, that you would give them your Reaſons why you maintain this Opinion.

Sir *Francis Pemberton*. The Queſtion that was put to me by yourſelf was a new Queſtion to me: I heard nothing concerning it; nor did I know what it was that would be put to me. I did tell you my preſent Apprehenſions of the Caſe you put; I did not ſpeak of an Order of the Houſe in general, but the Order that was in this Caſe, of the Order of taking him into Cuſtody: That was the Queſtion propoſed to me. I had no Reaſons to ſpeak of the Orders of the Houſe in general, I can give no Account of them; but 'tis *quoad hoc*, Whether the Order for taking him into Cuſtody was pleadable to the Juriſdiction? I did apprehend by the Law it was not pleadable: If I was underſtood in any other Senſe, I beg your Pardon, for I ſpake it *quoad hoc*. The Caſe of *Jay* 'tis, I think, which was, It being the Order of the Houſe to take him into Cuſtody, that being pleaded to the Juriſdiction of the Court of King's-Bench, whether that ought to be allowed or no? Therefore if it be looked upon as if I ſpake in general, I did not adapt my Words as I ſhould, but that is my Meaning.

Mr. Speaker. That comes much to the ſame Purpoſe, under Favour: You ſay, an Order of this Houſe being pleaded in this particular Caſe to the Juriſdiction of the King's-Bench, that Order ought to be over-ruled.

† *Vide* Verdon's *Caſe in Sir* Tho. Jones's *Reports*, p. 208.

Sir *Francis Pemberton.* I beg your Pardon, the Plea.

Mr. Speaker. Ay, the Plea.

Sir *Francis Pemberton.* It muſt be in Caſes of like Nature. I do not make ſuch a general Aſſertion, (but ſpeak as to this particular Caſe) I do not know how far that may go; and I hope the Houſe won't deſire my Opinion in that, I did not dream of it; we were upon this ſingle Point. And I muſt tell you, I did not apprehend any ſuch Thing would be put unto me. As to the Juſtification of this, I can't, may be, upon the ſudden, be prepared with ſuch Reaſons as will ſatisfy the Houſe; if they put it upon me to tell my preſent Apprehenſions, that is another Thing.

Mr. Speaker. I believe the Houſe will be willing to hear your preſent Apprehenſions.

Sir *Francis Pemberton.* That may be with ſome Prejudice to the Law, I only tell you my preſent Apprehenſions: If you will give me Time to give you my Reaſons, I will give you my Reaſons as well as I can; but you cannot expect I ſhould be furniſhed with ſuch Reaſons now, as I may upon further Thought.

I muſt premiſe this to you, That the Juriſdiction of this Houſe I do not take to be in queſtion, nor the Validity of their Orders. I think there is no Judge that underſtands himſelf, but will allow the Privileges of this Houſe; they are the Privileges of the Nation, and we are all bound to maintain them as much as any Member of the Houſe.

But the Queſtion is here now *de modo.* 'Tis agreed on all Hands, the taking him into Cuſtody is juſtifiable; but the Queſtion is (*de modo*) whether pleadable by way of Juriſdiction, or in Bar? And therefore I do not look upon the Privileges of this Houſe as at all in Queſtion; I only ſtate what I apprehend the Caſe and Matter to be. If the Houſe preſs me to declare my preſent Opinion of it, I muſt deſire I may enlarge myſelf, if there be Occaſion for it; it can't be expected I ſhould be prepared to anſwer all Things.

Mr. Speaker. There is no doubt the Houſe will not tie you up.

Sir *Francis Pemberton.* The Queſtion is of the Manner of pleading this Order of the Houſe; and the Queſtion is, Whether it may be to the Juriſdiction of the Court, or not?

And, under Favour, I have always taken it, that ſuch a Plea could not be pleaded to the Juriſdiction of the Court, but 'tis a good Plea by way of Bar. Any Man that underſtands the Law of *England*, makes a wide Difference between the pleading to the Juriſdiction, and in Bar: And I muſt tell you, that I take it, that nothing which is pleadable in Bar is pleadable to the Juriſdiction, there are ſeveral Manners of Pleading. The Juſtification here is a proper Matter of Bar, and 'tis a good Juſtification; but whether the Court ſhall be excluded their Juriſdiction, that they ſhall not know whether this be true or no, is the Queſtion? For if this be pleaded to the Juriſdiction, there is an End of it. Whether Mr. *Topham* had ſuch an Order or not, can't be a Queſtion upon a Plea to the Juriſdiction, for the Hands of the Court are tied up; and therefore whenever there is a Plea to the Juriſdiction, becauſe the Court cannot examine the Fact, they ſwear to their Plea.

Now here 'tis allowed by all People living, I think no Judge ever denied it, that the Order of this Houſe was ſufficient to take any one into Cuſtody. No Judge, I preſume, ever thought otherwiſe; but if this be pleaded to the Juriſdiction here, the Hands of the Court are cloſed: So that whether he had ſuch an Order or not, is not to be enquired of by the Court. But if it be pleaded in Bar, ſo 'tis a good Bar, and he will have as much Advantage as any, and all People muſt allow 'tis a good Bar. Therefore I would pray you that you would conſider, that in this Caſe here is nothing of your Privileges, nothing of the Juriſdiction of this Court is called in queſtion, but only the Manner of making uſe of it. There are Acts of Parliament; he that does any thing under an Act of Parliament, does it under as high an Authority, as he that acts under the Authority of this Houſe, for that is the Authority of this Nation. Yet in thoſe Caſes, though you are tender that none be prejudiced acting by that Authority, yet you have never made any Proviſion that it might be pleaded to the Juriſdiction. In the Caſe of the Commiſſion of Sewers, where they juſtify by your Authority, and the whole Nation's, though you have allowed them as beneficial a way of Pleading as can be, yet 'tis by way of Bar, not to the Juriſdiction of the Court. They ſay it is done by the Authority of the Commiſſion of the Sewers, but they do not plead it to the Juriſdiction. This I did in purſuance of the late Act for Sewers, and therefore you are to examine it no further. This never was allowed, nor the Parliament deſigned no ſuch Thing.

In this Caſe, if Mr. *Topham* comes and pleads this by way of Bar, no Court will deny but it is a good Juſtification, he has anſwered to the Thing, and juſtified what he has done. Your Authority will be allowed; but the Queſtion is, Whether this ſhall ſtop the Court that they ſhall not examine it? For any Man living may plead ſuch a Plea. Now the putting him to plead this by way of Bar, is only to ſee whether what he hath pleaded is true? As to all other Caſes, when you allow that where they do any thing in Proſecution of an Act of Parliament, they ſhall give the general Iſſue in Evidence, this is by way of Bar, you do in no Caſe ouſt the Court of its Juriſdiction. The King's-Bench hath a general Juriſdiction to examine the Things that are done, whether fairly or not. This Plea is allowable, and ought to be allowed to any Action of Treſpaſs to be brought. But, under Favour, I muſt ſubmit it to you: I take the Law to be manifeſtly plain, That by way of Plea to the Juriſdiction it cannot be, but it ought to be over-ruled, to put him to plead it by way of Bar, where he will have as full Advantage. This is my preſent Apprehenſion.

Then Sir Francis Pemberton *being withdrawn, a Queſtion was put for adjourning the Debate, and it paſſed in the Negative; and the Houſe Reſolved,*

"That the Orders and Proceedings of the Houſe being pleaded to the "Juriſdiction of the Court of King's-Bench ought not to be over-ruled."

And Sir *Francis Pemberton*, and Sir *Thomas Jones* were ordered to attend again, to give what further Reaſons they could for the Maintenance of their Judgment.

4

Veneris 19 *Julii*, 1689.

Sir Francis Pemberton *and Sir* Thomas Jones *attending, Sir* Francis *was firſt brought in.*

Mr. Speaker. Sir *Francis Pemberton*, the Houſe appointed you to attend formerly (but they have been prevented by other Buſineſs) to give the Reaſons of your Judgment *int' Jay & Topham.*

Sir *Francis Pemberton.* Mr. *Speaker*, This Caſe was an Action of Treſpaſs, and it was brought by *Jay* againſt *Topham*, for arreſting and detaining him in Priſon by the ſpace of ten Days, and keeping him 'till he paid him 30 *l.* to let him out of Priſon, by which Means many of his Affairs were loſt, and left in that Time undone, which is a common Action at Common Law.

To this the Defendant he comes and pleads, That there was an Order of this Houſe, made in *March*, 32 *Car.* II. (the Action is in the 34 in *May)* for taking of this *Jay* into Cuſtody, and to bring him to the Bar of the Houſe; and ſays, that by virtue of that Order he took him and detained him, with an Intention to bring him to the Bar of this Houſe. And this he pleads to the Juriſdiction of the Court, that the Court had nothing to do with it, nor ought further to examine this Matter. And upon that there was a Demurrer, and upon the Demurrer it was by the Court adjudged, that he ſhould anſwer over; that is, that he ſhould plead in Bar of the Action: And this is all that I can diſcern by the Caſe.

Now, Sir, as to the Reaſons, ſince this Houſe is pleaſed to command me, I will ſhortly tell you what my Apprehenſions were, and upon what Account we went in this Caſe. When this Action was pleaded to the Juriſdiction of this Court, I conſidered, and could find no Judgment at all againſt the Juriſdiction of this Court in any ſuch Caſe, nor any Vote of this Houſe, or any Thing or Order againſt it at all. The Caſe that came neareſt it, was the Caſe of Sir *John Elliot*, where there was an Information for ſome Miſbehaviour in this Houſe, againſt Sir *John Elliot*, and others: They did there plead to the Juriſdiction of the Court, and there the Court over-ruled it. It is true, afterwards, upon the Return of King *Charles* II. there was a Writ of Error brought upon that Judgment, and Errors aſſigned in the Lords Houſe, and the Judgment was reverſed; but there was no Error aſſigned in over-ruling the Plea to the Juriſdiction of the Court, but only this, that it was in the Body of the Information ſaid, That they did ſpeak ſome Words in Parliament which the Court of King's-Bench could not try, becauſe by the Judgment of the Lords Houſe they were not cognizable at Law; for the Members of this Houſe have always had a Freedom of Speech here: And upon that Account it was reverſed. But I muſt tell you, that in my Lord *Vaughan*'s Report he did allow, that as to the Miſcarriage that was alledged in laying Hands upon the Speaker, the Court of King's Bench had a Juriſdiction. *Vide* Vol. VII.

And finding no Footſteps of Law, nor any thing of this Honourable Houſe that could direct us, I did conſider then what was reaſonable and fitting to be done; I knew we had a Juriſdiction in the Caſe of ſuch an Action as this is, and I found the Objection againſt it was only one: That this Houſe was a ſuperior Court, of a higher Nature than the King's-Bench, and of a greater Authority; and that the King's-Bench had nothing to do to inſpect the Actions of this Houſe, or to examine what was done by virtue of any Order of this Houſe. And then, on the other ſide, I conſidered, if the Courts of Law could not examine it, that there would be a Cauſe ſtruck off by a bare Allegation, without any more to do: For if we had no Cognizance of it, if we could not examine the Matters that were done in Purſuance of the Order of this Houſe, how could we impannel a Jury, and to what Purpoſe ſhould we try it? For if it were found againſt him that he had exceeded his Authority, if we could not give Damages for it, what ſhould we examine for? I thought that the Conſequence of this would be, That that which was alledged to be a diſorderly Execution of the Vote, muſt be ſtruck off by a bare Allegation.

Sir, This coming before us in a judicial Way, and we being to do ſomething in it, either throw out the Cauſe, or over-rule the Plea to the Juriſdiction; I thought it moſt reaſonable that this Thing ſhould be examined in that Court.

Then I conſidered, that where Juſtifications are made by Virtue of Acts of Parliament, and every Body moſt acknowledge that Court is of a higher Nature than the King's-Bench, yet that was not enough to exclude the King's Courts from their Juriſdiction.

I conſidered in Caſes where Juſtification is made by Act of Parliament, there is a Juſtification by as high an Authority as this is, that will be allowed on all hands; for there are not only the Orders of this Houſe, but the Authority of the Houſe of Lords. You have in thoſe Caſes fenced the Matter as well as can be imagined, and taken as much Care to protect them; given ſome Power to plead ſummarily, others to plead Not Guilty, and juſtify by giving the ſpecial Matter in Evidence; but I never heard that there was any Proviſion made for the Pleading to the Juriſdiction, though it was done by a higher Authority: Therefore I thought that the high Authority and high Nature of this Court, could not exempt the King's-Bench, being a Court of Law, to examine, whether what was alledged to be done, was done in purſuance of your Authority, or not?

Then I did conſider with myſelf, that if this Plea ſhould be over-ruled, the Defendant was at no Prejudice, for the ſame Matter might be pleaded by way of Bar. And it would have been admitted a good Bar if true, and he could have no Manner of Prejudice that I know of by pleading as the Court directs. We did not queſtion the Legality of your Orders, nor the Power of them; but the great Buſineſs was, Whether he had purſued this Order of the Houſe of Commons, and that was the thing properly examinable? But on the other Side, it would be a monſtrous Miſchief to the Plaintiffs if ſuch a Plea was allowed to the Juriſdiction; for it would be agreed on all hands, if Mr. *Topham* had abuſed his Authority, and done any outrageous thing; if, when he had an Order to bring a Member to the Bar of this Houſe, he had kept him extravagantly, and not brought him thither, but exacted Money of him; if the Caſe in Fact was ſo, it is certain he ought to have been puniſhed, and to return Damages to the Perſon injured.

Then

Then in this Case, you know, *Mr. Speaker*, That this House sometimes hath a Recess, and Parliaments have Intervals. When this Court hath a Recess, and the Parliament is dissolved, (as there are many years sometimes when there is no Parliament) then in the Recess of Parliament, (supposing there was a good Order, and a Man had a Damage by the Abuse of this Order in the mis-execution of it) 'tis reasonable this Man should be satisfied. But peradventure a Parliament may not come in three or four Years, perhaps six or seven Years, in that Case he would lose his Action.

But that is not all, for in this Case, if we could not examine it, the Man would be without any Remedy in the World. So that if one of your Officers should abuse your Orders, the Person that he hath abused could have no Help, if the Courts of Law could not help him. This was my Apprehension: This Court we know may examine their Officers so as to punish them for it; but I never heard nor understood that this Court could go in such a Method as to give Damages; for first, in this Case, the Method of the Law would be precluded: We know what are the Methods of a Man's obtaining Damages; first, he must prove his Fact by Witnesses; I never heard this Honourable Court did condescend so far as to give an Oath; next, they must be assessed by a Jury: There is no other Way as I know of at all; I never knew this Court take upon them to assess Damages at all.

In the next Place, if they could arrive at the Matter of Damages, I never knew any Judgment given, or Execution awarded for Damages by this Honourable Court. So that my Apprehensions were, that unless the Courts at Law had Jurisdiction of all such Actions as these were, this Man must be remediless if he had Wrong: On the other Side, he would have recovered no Damages, if he had none. No Man would have said, That the House should not have made such an Order, or he should not have executed it such a way as you intended it.

Mr. Speaker. These were my Apprehensions in this Case; I considered it as well as I could, and did see a great Mischief on one Side, if the ordinary Courts of Law had no Jurisdiction, and could apprehend none if they had, in seeing whether the Orders of this House were fairly executed or no, when I am confident that none of this House would allow there should be any Abuse of their Order.

These being my Apprehensions as a Judge of the Court, I did think that I was bound to over-rule the Plea that was to the Jurisdiction of the Court. If I was mistaken in this Case, it was an Error of my Judgment, I had no mind or design to meddle with the Affairs of the House, nor to pry into what was done here; my Design was to do Justice. What weight these Things have with others, I must leave with this Honourable House: But this was that *that* induced me to give my Opinion for the over-ruling of the Plea.

Mr. Speaker. Did you deliver these Reasons in open Court, when you gave Judgment?

Sir *Francis Pemberton*. No, we very rarely give any Reasons in such Cases.

Mr. Speaker. Because if you had given these Reasons, it would have been some Light to the *Serjeant* to have pleaded afterwards.

Sir *Francis Pemberton*. I do not know truly what he did afterwards; but this I am sure he was told, that he might have pleaded this Matter in Bar, and this would have been a good Bar, and this I thought Direction enough.

Mr. Speaker. Is it not usual in Cases of great Moment, as this was, to argue the Point in giving Judgment?

Sir *Francis Pemberton*. It is so if they will argue it; but if the Counsel on both Sides let it go, we examine no further.

Sir Francis Pemberton *withdrew.*
Sir Thomas Jones *brought in.*

Mr. Speaker. The Occasion I suppose you know of your being sent for; 'tis to know upon what Reasons you over-ruled the Plea to the Jurisdiction between *Jay* and *Topham*.

Sir *Thomas Jones*. *Mr. Speaker*, in the first Place, I seriously profess before God, and this Honourable House, That I never designed to interfere with the Authority and Privileges of this House. I have had the Honour to be an unworthy Member of it in two several Parliaments; and truly I did always conceive, that for any thing transacted in this House, no other Court had any Jurisdiction to hear and determine it: And therefore I was always of Opinion, That the Judgment given in the Case of Sir *John Elliot* and my Lord *Hollis*, was a very erroneous and unjustifiable Judgment; [*See Vol.* VII. Page 249.] and the rather, because I knew that there was an Act of Parliament, that for any thing done in this House, by speaking, debating, or any reasoning whatsoever, there ought to be no Suit in Accusation or Condemnation concerning it, 'tis utterly void.

But, Sir, when I did give this Judgment, I do confess I did think there was a Difference to be taken in Matters that were merely transacted by this House, and may be complicated of the Authority and Commands of this House, and of the Execution of the Authority and Commands of this House abroad; and that was the Case that was before us in the King's Bench.

Mr. *Topham* was complained of, that he had not only imprisoned the Plaintiff *Jay*, but kept him in Prison till he had paid him 30*l*. Now I did humbly conceive that this Declaration ought to be answered, and not to be put off with a Plea to the Jurisdiction of the Court.

'Tis true, as I did say, Where the intire Matter is transacted in this House, there a Plea to the Jurisdiction of the Court is proper; but in the present Case I did conceive, That Jurisdiction was most proper that could try and determine the whole Merits of the Cause between both the Parties, especially where the Privileges of this House would no way suffer nor be injured. Thereupon I think Mr. *Topham* was advised and told, that he ought to plead this Matter in Bar, wherein there would be full Consideration, and perfect Regard given to the Commands and Authority of this House, and all imaginable Reverence: If he had but produced a Copy at most of your Journal, that had been sufficient, and no Judge would have been so silly, or imprudent at least, to have said, that had not been a good and sufficient Authority. But Mr. *Topham* thinks it not fit at all to answer in this Plea to the taking the 30*l*. for which, if it was Extortion upon the Subject, I am sure that whosoever has a Care of the Rights of the Subject, as you have, would not have suffered the Subject to have gone without Remedy and Satisfaction.

Sir, as to what may be said in this Case, that upon Complaint to you, you would have punished Mr. *Topham*; give me leave to say, that I think at that time, when Mr. *Topham* had this Prisoner in Custody, you were risen. But besides, to let that go, I do conceive, and I never found it in my Experience, when I was an unworthy Member of this House, That you have ever given Damage to a Party that was injured by your Officer. 'Tis true, you would punish your Officer for the Injury, but I never knew the Party injured have any Satisfaction.

Sir, another Reason is this, The Authority of this Court argues very great; but with all Reverence be it spoken to the Authority of this House, The Authority of an Act of Parliament is greater than the Authority of this Court: For although for the most part in Acts of Parliament you have the first Production and Formation of the Acts of Parliament, yet without the Consent of the Lords, without the Royal Assent of the King, 'tis no Law. But when 'tis a Law by all these Authorities, not only by yours, but by the Consent of the Lords; in Case one Man does any thing by Virtue of a Command of such an Act of Parliament, suppose it be under the Commissioners of Sewers, or in the executing of a Rate for the Poor, or raising your Poll-Act; if any other Man shall be so hardy as to question his doing his Duty according to your Commands, the Party so questioned is either to plead in Bar especially, or, which indeed you have provided for the Ease of Pleading in many Cases, he may plead it generally, and give in Evidence the special Matter: But it never was known that any Man should offer to say, I was an Officer by Act of Parliament, and therefore demand, Whether you will take Cognizance of the Matter, having done what I did by Act of Parliament.

And if it be so in Cases of Acts of Parliament, as nobody will deny, then I thought it might be so when there was only a Command of the House to do such a thing (the Reverence to which would have been perceived if there had been a Plea in Bar), and there was an Abuse of your Order, in the exacting thirty Pounds complained of: And I thought the rather so, because of the Act of Parliament I mentioned, 4 *H.* VIII. *c.* 8. which does provide, That there shall be no Prosecution or Suit for any Trouble or Grievance that is done in this House, and makes it void. But it goes further, (it orders no Plea indeed one way or other, either in Bar, or to the Jurisdiction, but) in the Close of the Act it says, That if any the Persons thereafter should be vexed, troubled, or otherways charged for any Cause as aforesaid, then he, or they, so troubled for the same, should have an Action of the Case against every such Person or Persons so vexing and troubling them, and recover treble Damages and Costs.

And upon these Reasons, Sir, I did give my Opinion at that time, that the Plea to the Jurisdiction of the Court should be over-ruled; which, if not agreeable to your Judgment, I must humbly beg your Pardon for it.

Mr. Speaker. Did you deliver these Reasons in Court, when you gave Judgment for over-ruling the Plea?

Sir *Thomas Jones*. Truly, Sir, I cannot say we did, nor cannot say we were demanded our Reasons, nor cannot say any thing was moved in arrest of Judgment, or shewed to us why we should give our Reasons; but I believe Mr. *Topham* will not say but he was advised, that it was proper for him to plead it in Bar, and then all Right would have been done to the Authority of this Court, and to Mr. *Topham*, as well as to the Plaintiff.

Mr. Speaker. It would have been a Satisfaction to Mr. *Topham* and the whole Kingdom, if you had given your Reasons; and we take it, that upon Demurrers of great Consequence, the Court uses to give the Reasons of their Judgments.

Sir *Thomas Jones*. Truly 'tis so long ago, I am not able to say whether we did or did not; but 'tis not usual for Judgment to be given *seriatim*, if all the Judges of the Court be agreed in the Thing, as they were in this Case.

Mr. Speaker. Where the Judges agree, the Lord Chief-Justice gives the Opinion of the Court; but then in Matters of this Moment, he usually gives the Reason.

Sir *Thomas Jones*. As far as I told you before, we did give the Reason, that it was more proper to be a Plea in Bar, than to the Jurisdiction of the Court.

Then Sir Thomas Jones *withdrew, and the House after a Debate*

Resolved,

" That Sir *Francis Pemberton*, giving Judgment to over-rule the Plea " to the Jurisdiction of the Court of King's-Bench, in the Case between " *Jay* and *Popham*, had broken the Privileges of the House." And also,

Resolved,

" That Sir *Thomas Jones* giving Judgment to over-rule the Plea to the " Jurisdiction of the Court of King's-Bench, in the Case between *Jay* " and *Topham*, had broken the Privileges of the House."

And by Order of the House, both Sir *Francis Pemberton* and Sir *Thomas Jones* were taken into Custody for the said Breach of Privilege, and lay till there came a Prorogation.

Proceed-

XLIII. *Proceedings before the Houſe of* Lords, (*from* Jan. 7, 1691 *to the* 17*th of* Feb. *following*) *between the Duke and Dutcheſs of* Norfolk, *upon the Duke's Bill, Intituled,* An Act to diſſolve the Marriage, &c. 3 W. & M.

The 7th of *January* the ſaid Bill was lodged in the Houſe of Lords.

The 8th of *January*.

THE Dutcheſs of *Norfolk* having received Intimation, that the Duke of *Norfolk* was this Day offering a Bill to the Houſe of Lords, for diſſolving the Marriage between them, and that the ſame was under bate before their Lordſhips; ſhe was adviſed to preſent the following Petition.

To the Right Honourable the Lords Spiritual and Temporal in Parliament aſſembled,

The humble Petition of Mary *Dutcheſs of* Norfolk,

Sheweth,

THAT your Petitioner being informed, that the Duke of *Norfolk* is at this time offering a Bill to your Lordſhips, for diſſolving the Marriage between him and your Petitioner,

Your Petitioner humbly prays ſhe may be heard by your Lordſhips, before ſuch Bill be received.

And your Petitioner will ever pray, &c.
M. Norfolk.

Upon which Petition, their Lordſhips were pleaſed to make the following Order, *viz.*

Die Veneris 8 *Januarii*, 1691.

A Bill having been offered to this Houſe, on the Behalf of the Duke of *Norfolk*, to diſſolve the Marriage between the ſaid Duke and his Dutcheſs; it was ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Her Grace ſhall have Notice thereof, and may be heard by her Counſel, at the Bar of this Houſe, on *Tueſday* next at twelve of the Clock, what ſhe hath to object againſt the receiving the ſaid Bill: At which time the ſaid Duke may alſo be heard by his Counſel, for the ſaid Bill, if he ſhall think fit. *Matth. Johnſon*, Cler' Parliamentor'.

Die Martis 12 *Januarii*, 1691.

After hearing Counſel this Day, at the Bar, what they could object for her Grace the Dutcheſs of *Norfolk*, againſt the receiving of a Bill offered by his Grace the Duke of *Norfolk*, to diſſolve the Marriage between him and his Dutcheſs; as alſo the Counſel of his Grace the Duke of *Norfolk* for receiving the ſaid Bill. And after Conſideration of what was offered by Counſel, on either Side, and a long Debate thereupon:

This Queſtion was put,
Whether the Duke of Norfolk's *Bill ſhould be received?* It was reſolved in the Affirmative.

Which Bill is as followeth:

An Act to diſſolve the Marriage of Henry *Duke of* Norfolk, *Earl Marſhal of* England, *with the Lady* Mary Mordant, *and to enable the ſaid Duke to marry again.*

FOraſmuch as *Henry* Duke of *Norfolk*, and Earl Marſhal of *England*, having been married to the Lady *Mary Mordant*, hath made full Proof that his ſaid Wife is guilty of, and hath committed, Adultery on her Part: And foraſmuch as the ſaid *Henry* Duke of *Norfolk* hath no Iſſue, nor can have any probable Expectation of Poſterity to ſucceed him in his Honours, Dignities, and Eſtate, unleſs the ſaid Marriage be declared void by Authority of Parliament, and the ſaid Duke be enabled to marry any other Woman: The King and Queen's Moſt Excellent Majeſties, upon the humble Petition of the ſaid *Henry* Duke of *Norfolk*, having taken the Premiſes into their Royal Conſideration, for divers weighty Reaſons, are pleaſed that it be Enacted, and be it Enacted, by the King and Queen's Moſt Excellent Majeſties, and by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the Authority of the ſame, That the ſaid Marriage between the ſaid *Henry* Duke of *Norfolk*, and the ſaid Lady *Mary* his Wife, ſhall from henceforth be null and void; and is by Authority of this preſent Parliament Declared, Adjudged, and Enacted to be null and void, to all Intents, Conſtructions, and Purpoſes whatſoever. And that it ſhall and may be lawful to, and for the ſaid *Henry* Duke of *Norfolk*, at any time or times hereafter, to contract Matrimony, and to marry (as well in the Life-time of the ſaid Lady *Mary*, as if ſhe were naturally dead) with any other Woman or Women, with whom he might lawfully marry, in caſe the ſaid Lady *Mary* was not living: And that ſuch Matrimony, when had and celebrated, ſhall be a good, juſt and lawful Marriage, and ſo ſhall be adjudged, deemed and taken, to all Intents, Conſtructions and Purpoſes. And that all and every Children and Child born in ſuch Matrimony ſhall be deemed, adjudged and taken to be born in lawful Wedlock, and to be Legitimate and Inheritable, and ſhall inherit the ſaid Dukedom of *Norfolk*, Office of Earl Marſhal of *England*, and all other Earldoms, Dignities, Baronies, Honours, and Titles of Honour, Lands, Tenements, and other Hereditaments, from and by their Fathers, Mothers, and other Anceſtors, in like Manner and Form, as any other Child or Children, born in lawful Matrimony, ſhall or may inherit, or be inheritable, according to the Courſe of Inheritances uſed in this Realm; and to have and enjoy all Privileges, Preheminences, Benefits, Advantages, Claims and Demands, as any other Child or Children born in lawful Wedlock may have or claim by the Laws or Cuſtoms of this Kingdom. And be it further Enacted, That the ſaid *Henry* Duke of *Norfolk* ſhall be intituled to be Tenant, by Courteſy, of the Lands and Inheritance of ſuch Wife, whom he ſhall hereafter marry: And ſuch Wife as he ſhall ſo marry ſhall be intituled to a Dower of the Lands and Tenements of the ſaid *Henry* Duke of *Norfolk*, and of ſuch Eſtate whereof ſhe ſhall be Dowable, as any othe, Huſband, or Wife may, or might claim, have, or enjoy: And the Child or Children, born in ſuch Marriage, ſhall and may derive and make Title, by Deſcent, or otherwiſe, to, and from any their Anceſtors, as any other Child or Children may do, any Law, Statute, Reſtraint, Prohibition, Ordinance, Canon, Conſtitution, Preſcription or Cuſtom, had, made, exerciſed, or uſed to the contrary of the Premiſſes, or any of them, in any wiſe notwithſtanding. And be it further Enacted, by the Authority aforeſaid, That the ſaid Lady *Mary* ſhall be, and is hereby barred and excluded of, and from all Dower and Thirds, and of and from all Right and Title of Dower and Thirds, unto, or out of any the Honours, Manors, Lands, or Hereditaments of the ſaid Duke; and that all Conveyances, Jointures, Settlements, Limitations and Creations of Uſes and Truſts, of, into, or out of, any Honours, Manors, Lands or Hereditaments, at any time heretofore made by the ſaid Duke, or any of his Anceſtors, or Truſtees, unto or upon, or for the Uſe or Benefit of the ſaid Lady *Mary*, or any the Iſſue of her Body, or for raiſing, diſcharging, or counter-ſecuring any the Manors, Lands, or Hereditaments of the ſaid Lady *Mary*, or any of her Anceſtors, ſhall be from henceforth utterly void, and of none Effect: And all and every the ſaid Honours, Manors, Lands or Hereditaments of the ſaid Duke, or any of his Anceſtors or Truſtees, ſhall from henceforth remain and be to, and for, the Uſe and Benefit of the ſaid Duke, and ſuch other Perſon or Perſons, and for ſuch Eſtates and Intereſts, and in ſuch Manner and Form, as if the ſaid Lady *Mary* was now naturally dead, without any Iſſue of her Body. And alſo, that all Limitations and Creations, of any Uſe, Eſtate, Power or Truſt, made by any of the Anceſtors of the ſaid Lady *Mary*, unto or for the Uſe or Benefit of the ſaid Duke, his Heirs or Aſſigns, out of any the Manors, Lands, or Hereditaments, of any of the Anceſtors of the ſaid Lady *Mary*, ſhall be from henceforth void, and of none Effect.

REASONS offered to the Lords in Parliament, for receiving the before-mentioned Bill of Divorce, on the Behalf of his Grace the Duke of Norfolk.

THE *not having a Sentence for a Separation from the Eccleſiaſtical Court, is thought to be no Objection againſt the receiving or paſſing the Duke of* Norfolk's *Bill, for theſe* Reaſons, *viz.*

I. The *Houſe* proceeds, in this Caſe, in their legiſlative and in their judicial Capacity; and in their legiſlative, all things muſt proceed originally by Bill.

II. That a Sentence in the Eccleſiaſtical Court can give the Duke no Relief, as to what he ſeeks by his Bill, *viz.* To diſſolve his Marriage, and enable him to marry again; but that Relief muſt ſpring originally from the *Parliament*, without Relation to the *Eccleſiaſtical Court*.

III. That in Caſe there was ſuch a Sentence, yet it would afford no Aſſiſtance in this Caſe: For the *Parliament*, in Caſes of this Nature do not rely upon any ſuch Sentence for a ſatisfactory Proof of the Fact; but hear Witneſſes *viva voce*, and thereupon proceed.

IV. That there are Witneſſes *now* living to prove the Fact, which may be examined *viva voce*; whereas, if they *die* during the tedious Proceeding in any inferiour Court, then there can be no other Proof but *Depoſitions* taken in Writing.

V. That Mrs. *Wharton*'s Caſe was received *Originally in Parliament*.

13 *Januarii*, 1691.

The Duke of *Norfolk*'s Bill aforeſaid having been Yeſterday received and read, the Dutcheſs of *Norfolk* preſented the following Petition to their Lordſhips this Day:

To the Right Honourable the Lords Spiritual and Temporal in Parliament aſſembled,

The humble Petition of Mary *Dutcheſs of* Norfolk,

Sheweth,

THAT your Petitioner being married to the Duke of *Norfolk* fourteen Years and upwards, never had or received from her Huſband any Intimation of a Miſdemeanor, on her Part, againſt him; which, joined to her Innocency of the Crime mentioned in the Bill, makes this Proceeding before your Lordſhips very ſurprizing to her: Her Perſon, Eſtate, and Honour, which is more dear to her than her Life, being now brought in Queſtion:

Your Petitioner humbly prays ſhe may have a Copy of the particular Charge againſt her, with the Names of the Witneſſes, and reaſonable Time allowed her to anſwer the ſame, before any farther Proceedings upon the Bill. *Mary Norfolk.*

Upon which Petition the following Order was made.

Die Mercurii 13 *Januarii*, 1691.

Upon reading the Petition of *Mary* Dutcheſs of *Norfolk*, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Sir *Richard Reynes*, Sir *Charles Hedges*, and Dr. *Oxenden*, do attend this Houſe To-morrow at ten of the Clock in the Forenoon.

Matth. Johnſon, Cler' Parliamentor.'

14 *Januarii*, 1691. After having heard the Civil Lawyers, the following Order was made.

Die Jovis 14 *Januarii*, 1691.

After hearing this Day the Civil Lawyers, purſuant to the Order Yeſterday, upon reading the Dutcheſs of *Norfolk*'s Petition, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That his Grace the Duke of *Norfolk* ſhall bring in the Charge againſt his Dutcheſs, and particularly to the Perſon, Time and Place, by *Saturday* next, at twelve of the Clock. *Matth. Johnſon*, Cler' Parliamentor'.

16 *Januarii*, 1691.

This Day the Duke of *Norfolk* brought in the following Charge against his Dutchess:

The Charge which Henry *Duke of* Norfolk, *Earl Marshal of* England, *doth exhibit against his Wife*, Mary *Dutchess of* Norfolk, *before the Lords Spiritual and Temporal in Parliament assembled, pursuant to their Lordships Order of the* 14*th of* January, 1691, *is for the Crime of Adultery.*

THE Person charg'd to commit the said Crime with the said Dutchess, is *John Germaine*, of the Parish of St. *Margaret*'s, in the Liberty of *Westminster*.

The Times when the said Crime was committed, were between the Months of *June* and *December*, 1685, and several Times since.

The Places where the said Crime was committed, are at *Whitehall*, *Windsor*, and within the Parishes of St. *Margaret*'s *Westminster*, St. *Martin's in the Fields*, St. *James*'s, St. *Ann*'s within the Liberty of *Westminster:* And in the Parish of *Lambeth*, in the County of *Surrey*.

Norfolk, and Marshal.

Upon which the following Order was made.

Die Sabbati, 16 *Januarii*, 1691.

Upon reading, this Day, the Charge, which *Henry* Duke of *Norfolk*, Earl Marshal of *England*, hath exhibited against his Wife, *Mary* Dutchess of *Norfolk*, for the Crime of Adultery: It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That her Grace the Dutchess of *Norfolk* do attend this House on *Monday* next, or some Person on her Behalf, then to receive a Copy of the Charge against her.

Matth. Johnson, Cler' Parliamentor'.

19 *Januarii*, 1691.

The Answer of Mary *Dutchess of* Norfolk, *to the Charge exhibited against her by the Duke of* Norfolk, *before the Lords Spiritual and Temporal in Parliament assembled.*

THIS Respondent is advised, that the Charge exhibited by the Duke of *Norfolk* into this Honourable House against her, as to Time and Place, is too general, and is not pursuant, nor doth answer the End of your Lordships Order of the 14th Instant, made upon the humble Petition of this Respondent. Wherefore she doth humbly hope, and pray, your Lordships will not oblige her to make any further answer, 'till the Duke shall bring in a particular and certain Charge, as to Time and Place, against her.

And this Respondent doth the rather humbly insist, That your Lordships would please to require the Duke to be particular, and certain in these material Circumstances of his Charge against her; for that it appears, by his own shewing therein, that the supposed Crimes objected to her, and alledged to be committed, were above six Years before the Bill was offered to this Honourable House: During most of which Time, at the Advice, and by the Approbation of the Duke, was, and continued beyond the Seas, to ease him in his Charge and Part; he frequently declaring, that when he should be more easy in his Fortune, they should live together.

M. Norfolk.

Upon which Answer the following Order was made. And the Duke's Second Charge delivered in the same Day.

Die Martis, 19 *Januarii*, 1691.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That her Grace the Dutchess of *Norfolk* shall have a Copy of the Duke's Charge delivered this Day against her; and that she, or Sir *Thomas Pinfold*, do attend this House, to Morrow at 11 of the Clock in the Forenoon, to answer the said Charge.

Matthew Johnson, Cler' Parliamentor'.

Which Copy is as followeth:

The Charge which Henry *Duke of* Norfolk, *Earl Marshal of* England, *doth exhibit against his Wife*, Mary *Dutchess of* Norfolk, *before the Lords Spiritual and Temporal in Parliament assembled, pursuant to their Lordships Order of the* 14*th of* January, 1691, *is for the Crime of Adultery.*

THE Person charged to commit the said Crime with the said Dutchess, is one *John Germaine*, of the Parish of St. *Margaret*'s *Westminster:*

The Times and Places when the said Crime was committed, were at *Whitehall*, in the Months of *June*, *July*, *August*, some, or one of them, in the Year 1685. At *Windsor*, in the Months of *July*, *August*, or *September*, some, or one of them, in the said Year 1685. In the Parish of St. *Margaret*'s *Westminster*, *March*, *April*, *May*, *June*, some, or one of them, in the Year of our Lord, 1690. And in the said Parish of St. *Margaret*'s *Westminster*, in the Months of *July* or *August*, 1690. In the Parish of *Lambeth*, in the County of *Surrey*, in the Months of *May*, *June*, *July*, *August*, some, or one of them, in the Year 1691.

Norfolk, and Marshal.

Served by Thomas Bowen,
19 Jan. *before Six of the Clock.*

Upon which, the next Day, *viz.* the 20th of *January*, 1691, the Dutchess of *Norfolk* presented the following Petition:

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled,

The humble Petition of Mary *Dutchess of* Norfolk.

THAT your Petitioner was served with an Order of this Honourable House, late last Night, to attend your Lordships this Day, by Eleven of the Clock, either in Person, or by Sir *Thomas Pinfold*, to answer to a new Charge brought in against her, by her Husband the Duke of *Norfolk*.

Your Petitioner is advised, That, for her just Defence, it is necessary to alledge in her Answer several special Matters relating both to the Duke and herself.

That in this short Time appointed by your Lordships, your Petitioner finds it impossible to instruct Counsel, to prepare such an Answer as she is advised is necessary to put in.

Wherefore your Petitioner humbly prays your Lordships, she may have convenient Time to put in her Answer to the said Charge.

And your Petitioner will ever pray, &c.

M. Norfolk.

Upon which the following Order was made.

Die Mercurii, 20 *Januarii*, 1691.

Upon reading the Petition of *Mary* Dutchess of *Norfolk*, praying that she may have convenient Time for answering to the Charge put in against her, by his Grace the Duke of *Norfolk*, Yesterday: It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That her Grace the Dutchess of *Norfolk* shall peremptorily answer, by herself, or Proctor, to the said Charge, to Morrow at Eleven of the Clock in the Forenoon.

Matth. Johnson, Cler' Parliamentor'.

Accordingly, *January* the 21st, the Dutchess of *Norfolk* delivered in the following Answer:

I *Mary* Dutchess of *Norfolk*, under Protestation, That the pretended Charge of Adultery given against me, in the Honourable House of Peers, was, and is general, insufficient, and such as, I humbly conceive, I am not bound by Law to give Answer unto. Yet knowing my own Innocency, and that I am not guilty of the pretended Crime, this Protestation being sacred to me, I shall, and do, under the Matters and Qualifications hereafter mentioned, answer, and say, hereby affirming, That having been married to his Grace the Duke of *Norfolk* for near 15 Years, he never did ('till this pretended Charge given against me) in the least pretend, or intimate unto me, that I had ever injured his Bed; but did always treat me with great Kindness and Respect. And about the Year 1685, at his Request and Desire, I did go with him from *London* to *France*, and there continued with him for some Time; where his Grace, being under an Indisposition, and continuing so for some Time, he shewed such Affection to me, and put so great Trust and Confidence in me, that all such Things that were administer'd to him, in order to his Recovery, he did not, nor would receive any of them but what came from my Hands; and I did with great Care attend him: And being recovered, he told me his Occasions required him to go for *England*, but he would return to me in *France* within some short Time, and bring me home to *England*; and at his parting with me, he shewed great Affection to me, and in great Passion of Love, with Tears in his Eyes, said, He had Ten Thousand Pardons to ask me, desiring my Patience, and that I should return into *England* to him in some short Time. And after his Grace's Return into *England*, he having Notice from me that my Lodgings was inconvenient, and desiring his Leave to change the same, he wrote me Word very affectionately, that God forbid he should constrain me to any Inconveniency, and left me to my Liberty therein. And before his parting with me, in *France*, as a Testimony of his Love and affection to me, he ordered 400*l.* yearly to be paid unto me, out of his own Estate, by Quarterly Payments, over and above the separate Maintenance settled upon me by my Father, upon my Marriage with him. And that after his Arrival in *England*, he made several Visits to my Mother, the Countess of *Peterborough*; and with great Observance and Respect, ask'd her Blessings, and told her, he had left me well and safe in *France*; and said, that his own Debts were pressing upon him; but if her Daughter (meaning myself) would consent that the Manor of *Drayton*, and other Places, should be settled upon him and his Heirs, he should thereby he made a happy Man. And I coming into *England*, his Grace having put off House-keeping, and dwelling in the Countess of *Peterborough*'s Lodgings in St. *James*'s for about Two Years; and I suing him for Alimony (the said 400*l.* a Year not being paid unto me), he did not, during that Suit, object any Crime against me, which had been proper for him to have done, to avoid Alimony, if I had been guilty. And I, the said *Mary* Dutchess of *Norfolk*, being at *Drayton* in *Northamptonshire*, his Grace did write very affectionately to me. And that Disturbances happening in those Parts, in *November*, 1688, I left *Drayton*; and, with the Consent of the Duke, went beyond Seas, and there continued 'till sent for by my Father and Mother, and then returned, which was in or about *October*, 1691, with the Duke's Consent. And then Applications being made to me by the Duke my Husband, to join with him in the Sale of *Castle-Rising*, and other Estates: But I being advised this must be injurious to me, could not join therein, which I humbly apprehend to be the true Cause and Occasion of this Proceeding against my Honour, on the Duke my Husband's Part.

And I the said *Mary* Dutchess of *Norfolk*, adhering to my Protestation of my Innocency, and denying that I am guilty of the pretended Crime charged against me, and being unwilling to impeach my Husband of any Crime whatsoever; yet being advised, That, by the Laws of the Land, a Husband suing a Divorce for the Adultery of his Wife, he ought not to obtain any Sentence of Divorce, if he be proved guilty of the same.

Wherefore this Respondent doth aver, and is ready to prove, that the Duke her Husband was, and is guilty of Adultery, and hath continued in the Course of Adultery for these ten Years last past, and doth so continue.

My Lords,

It is my Misfortune to be thus accused. I had rather stand charg'd for High-Treason before your Lordships, than with this ignominious Crime. In the Charge for High-Treason, the Manner of Trials, and the Ways of Proceedings are known; so is the Punishment in this Case against me.

Your Lordships are now creating new Ways of Proceeding against me, and a new Law to punish me; and this for a Crime supposed, and alledged to be committed seven Years past, in another Reign, after publick Indemnities in the Sessions of Parliaments, many Sittings of Parliaments, and Dissolutions of others, without mentioning this Crime against me. My Counsel are to seek how to advise my Defence in the Proceedings, being altogether strange, and without Precedent, or Example.

I find my Prosecution now to be very violent, and my Proceeding to be very swift upon me, having had but one Night to prepare my Answer to this General Charge. I do in this Place publickly declare, I am innocent of what is objected to me, and am not guilty of defiling my

husband's Bed: I am not guilty of the Crime charg'd against me. I hope (being thus accused) I may, without Vanity and Vain-Glory, say, what is well known, That I am not only the Duke of *Norfolk*'s Wife, but also born and descended from Parents and Ancestors of the ancient Nobility: That your Lordships Ancestors, and my Ancestors, who sat in this House, knew no such Proceeding: It is with Regret that I bring this Answer for myself, and against my Husband, but it being my Defence, I hope you will excuse me.

And if your Lordships shall, in your great Wisdom, proceed farther in this Matter, I hope, and do most heartily pray, that I may hereafter have convenient Time to make my Proofs, and full Defence; and then I doubt not of your Lordships Justice to me, as well as for my Husband, who sits and Votes with your Lordships. *M. Norfolk.*

Upon the delivering the said Answer, the next Day the following Order was made.

Die Veneris, 22 *Januarii*, 1691.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That his Grace the Duke of *Norfolk* shall produce his Witnesses, to Morrow at Ten of the Clock in the Forenoon, to be sworn. And that her Grace the Dutchess of *Norfolk* do attend this House, by herself, or Proctor, at the same Time; and may have Orders for Witnesses if she pleases. *Matth. Johnson*, Cler' Parliamentor'.

Accordingly, *January* 23, 1691, the Duke's Witnesses were produced; and whose Names are as followeth,

Margaret Ellwood	*John Hall*	*Mary Boyle*
Ann Burton	*Mary Hall*	*Rice Jones*
Rowland Owen	*Richard Owen*	*Ann Jones*
Thomas Hudson	*William Miles*	*John Hoskins*
Simon Varelst	*Andrew Anderson*	*William Baily*
Peter Scriber	*Thomas Foster*	*John Wood*
John Reynolds	*Margaret Foster*	*Henry Dagley*
Thomas Lloyd	*Jane Wadsworth*	*John Colvin.*

After these several Witnesses were produced, on Behalf of the Duke of *Norfolk*, and had given in their several Places of Abode, *&c.* the following Oath was administred to them:

YOU shall true Answer make to all such Questions as shall be asked you by this Honourable House, in relation to the Charge of Adultery, brought in by the Duke of Norfolk, *against the Dutchess of* Norfolk, *with* John Germaine; *you shall declare your whole Knowledge of this Matter, and shall speak the Truth, the whole Truth, and nothing but the Truth, as well upon the Matter you shall be examined on Behalf of his Grace the Duke of* Norfolk, *as upon such Interrogatories as shall be exhibited on Behalf of the Dutchess of* Norfolk, *without Favour or Affection to either Party.*

So help you God, and by the Contents of this Book.

After the Oath administer'd, as aforesaid, the following Order was made.

Die Sabbati, 23 *Januarii*, 1691.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Dutchess of *Norfolk*'s Proctor shall have a Copy of what was taken upon swearing the Duke of *Norfolk*'s Witnesses at the Bar; and that the Duke's Witnesses shall give in their Evidence at the Bar, on *Tuesday* next at Ten of the Clok in the Forenoon; and that the Dutchess of *Norfolk*, by herself, Proctor and Counsel, shall attend, together with the Duke's Proctor and Counsel, at the same Time.

Matth. Johnson, Cler' Parliamentor'.

After Examination of Witnesses, on Behalf of the Duke, the following Order was made.

Die Martis, 26 *Januarii*, 1691.

After hearing this Day, the Witnesses on the Behalf of his Grace the Duke of *Norfolk*; It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That *Friday* next, at Ten of the Clock in the Forenoon, shall be, and is hereby appointed, for her Grace the Dutchess of *Norfolk* to make her Defence by her Proctor or Counsel; and that his Grace the Duke of *Norfolk*'s Counsel and Proctor be then present, and the Witnesses who this Day delivered their Evidence, or Oaths, on his Grace's Behalf: And that the Dutchess may have an Order for such Witnesses, as she shall think fit to make use of, on her Grace's Behalf.

Matth. Johnson, Cler' Parliamentor'.

Upon which Order, the Dutchess was advised to present the following Petition:

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled,

The humble Petition of Mary *Dutchess of* Norfolk,

Sheweth,

THAT since the Examination of Witnesses before your Lordships against your Petitioner, upon *Tuesday* last, the utmost Endeavour and Diligence hath been used, to prepare for her Defence against the Time appointed by your Lordships.

That your Petitioner is very much concerned, that, for the necessary Defence of herself, she should be forced to lie under the Charge sworn against her, one Moment beyond the Time given her by your Lordships.

But, upon a Consultation with her Counsel and Sollicitor last Night, she is advised, that it is absolutely necessary for her to address to your Lordships for Time, 'till *Monday* next, to bring in her Defence, some of her most material Witnesses being remote from *London*; and though she has sent for them, and used all Means possible to get them ready by the Time appointed, she cannot be able to have them here before *Monday* next.

Wherefore your Petitioner humbly prays your Lordships, (it being a Case of the highest Concern and utmost Importance to your Petitioner) to give her Time, 'till *Monday* next, to bring in her Defence.

And your Petitioner shall ever pray, *&c.*

M. Norfolk.

Upon which Petition the following Order was made.

Die Veneris, 29 *Januarii*, 1691.

Whereas this Day was appointed for her Grace the Dutchess of *Norfolk* to make her Defence; upon reading the Petition of her Grace the Dutchess of *Norfolk*, praying, (it being a Case of the highest Concern, and utmost Importance to her) to give her Time, 'till *Monday* next, to bring in her Defence; after hearing her Counsel at the Bar, and upon Oath made that some of the Dutchess's material Witnesses are out of Town, it is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That her Grace the Dutchess of *Norfolk* hath hereby Time given her for making her Defence, until *Monday* the First Day of *February* next, at Eleven of the Clock in the Forenoon.

Matth. Johnson, Cler' Parliamentor'.

Accordingly the Dutchess of *Norfolk* began her Defence; and the following Order was made.

Die Lunæ, 1 *Februarii*, 1691.

It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That on *Wednesday* next, at Eleven of the Clock in the Forenoon, the House shall proceed in hearing the Dutchess of *Norfolk*'s Evidence; and that all the Witnesses that have been sworn on either Side, do then attend the House.

Matth. Johnson, Cler' Parliamentor'.

Which they did, and the following Order was made.

Die Mercurii, 3 *Februarii*, 1691.

After having this Day heard several Witnesses on Behalf of her Grace the Dutchess of *Norfolk*, as also for his Grace the Duke of *Norfolk*, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That her Grace the Dutchess of *Norfolk*'s Counsel shall proceed in her Grace's Defence on *Saturday* next at Twelve of the Clock.

Matth. Johnson, Cler' Parliamentor'.

They proceeded accordingly, and the following Order was made.

Die Sabbati, 6 *Februarii*, 1691.

After having this Day heard several Witnesses on the Behalf of the Dutchess of *Norfolk*, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Counsel for his Grace the Duke of *Norfolk* shall proceed to examine Witnesses, on *Tuesday* next at Twelve of the Clock.

Matth. Johnson, Cler' Parliamentor'.

Which accordingly they did, and the following Order was made.

Die Martis, 9 *Februarii*, 1691.

After hearing some Witnesses this Day, on the Behalf of his Grace the Duke of *Norfolk*, It is Ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Counsel for his Grace the Duke of *Norfolk*, as also the Counsel for her Grace the Dutchess of *Norfolk*, shall be heard on *Thursday* next, at Twelve of the Clock, to sum up the Evidence on either Side; and that Mrs. *Sawbridge*, and Mrs. *Stourton*, do then attend to be heard.

Matth. Johnson, Cler' Parliamentor'.

The Counsel attended accordingly, but not heard; and their Lordships were pleased to make the following Order.

Die Jovis, 11 *Februarii*, 1691.

It is Ordered by the Lords Spiritual and Temporal, in Parliament assembled, That the Counsel for his Grace the Duke of *Norfolk*, as also the Counsel for her Grace the Dutchess of *Norfolk*, shall be heard to-Morrow at One of the Clock in the Afternoon, to sum up the Evidence on either Side; and that Mrs. *Sawbridge*, and Mrs. *Stourton*, do then attend to be heard.

Matth. Johnson, Cler' Parliamentor'.

After Evidence summed up, this following Order was made.

Die Veneris, 12 *Februarii*, 1691.

After hearing this Day the Counsel, and a Civilian, for his Grace the Duke of *Norfolk*; and also Counsel, and a Civil Lawyer, for her Grace the Dutchess of *Norfolk*, who summed up the Evidence for their Graces severally, It is Ordered by the Lords Spiritual and Temporal, in Parliament assembled, That on *Tuesday* next, at Twelve of the Clock, this House shall proceed in the Debate of this Business; and that then no other Business whatsoever shall intervene: And that all the Lords in and about the Town shall be summoned then to attend; and that the Officers that summon them, give the House an Account of what Lords they summon.

Matth. Johnson, Cler' Parliamentor'.

The Matter was accordingly enter'd upon; and, after some previous Debates by their Lordships, they were pleased to adjourn 'till the next Day, when they proceeded, *viz.*

Die Mercurii, 17 *Februarii*, 1691.

The Depositions taken at several Times before, on the Behalf of his Grace the Duke of *Norfolk*, as also those taken on the Behalf of her Grace the Dutchess of *Norfolk*, were read at the Table, by the Clerk, and are as followeth, *viz.*

The PROCEEDINGS *of the LORDS upon the Evidence.*

Rowland Owen *examin'd on the Behalf of the Duke of* Norfolk, *against the Dutchess of* Norfolk.

ROwland Owen saith, That Mr. *Reyner*, about Six Years since, being the Duke of *Norfolk*'s Butler, order'd him to carry the Things out; the Lodgings being open, he saw Mr. *Germaine* in Bed with the Dutchess of *Norfolk*, the Dutchess leap'd out of the Bed, and put on a Morning Gown, and *Germaine* hid himself in Bed; this was between Five and Six o'Clock in the Evening, about a Fortnight before *Bartholomew* Day; he did not tell the Duke: He is sure it was *Germaine*; he saw him often, twice or thrice a Day; the outward Door of the Lodgings was shut, but he opened it with a Key he had.

Rowland Owen examined a second Time, saith, he never had the Key of the Lodgings but once, that Mr. *Reyner* gave him the Key, when he went (as he told him) to the Blue Posts in the *Hay-Market*, to bespeak the Dutchess's Supper; he saith he saw not *Frances Knight* then in the Lodgings, nor any other Woman but the Dutchess of *Norfolk*; he saith, he

hath ſeen *Reyner* often open the outward Door of the Lodgings, when he hath been by, without calling *Frances Knight:* He ſaith, that he himſelf opened the firſt Door with the Key, the ſecond Door was not cloſe ſhut, and the third Door was open: He ſaith, two of the Doors are ſtraight forward, and the third turns a little on the right hand; he ſaith, he was gone in at the third Door when the Dutcheſs leap'd out of Bed.

Witneſs produced to the Credit of Rowland Owen.

Edward Sylveſter ſaith, He hath known *Rowland Owen* three or four Years, and he hath truſted him in Buſineſs, and he hath ever been very faithful; he hath truſted him in Stores to the King, and he might have embezzled, but ever found him honeſt; and he hath had three or four Thouſand Pounds worth of Goods that he might have embezzled, and hath had Opportunities of doing ill Things, but he never did: He hath truſted him with every Thing he hath; he hath had more than 20*l.* embezzled by others, but he never embezzled a Halfpenny: He knows not well who recommended him to him; he hath an hundred Men now, and he knows not that three of them were recommended: He hath truſted him with Goods an hundred and an hundred Times that he might have embezzled; and others that he hath ſo truſted have cozen'd him, and he hath loſt 20*l.* in a Month's Time by them; he works at our Work, and that better than Twenty that he hath had, and he is no Porter: He ſaith he knows not Mr. *Negus*, nor was not acquainted with him 'till Yeſterday.

John Jones ſaith, he hath known *Rowland Owen* above three Years, and that he is a very honeſt Man, and that he ever found him faithful; that he lodged in his Houſe, and that he might have done him Injuries if he would, and he hath been employ'd elſewhere, and he never heard any Ill of him; he believes he is a Man of a better Principle than to take a falſe Oath.

Thomas Cooke ſaith, That he hath known *Rowland Owen* five Years, and knows not but that he is an honeſt Man, and ſaith that he maintains his Family by his Labour; he is his Neighbour, and never heard him taxed with any Miſdemeanour.

Witneſſes ſworn on Behalf of the Dutcheſs, for invalidating the Teſtimony of Rowland Owen, *viz.*

Frances Knight ſaith, She knows *Rowland Owen* as he was a Fellow-Servant in the Duke of *Norfolk*'s Houſe; ſhe hath known him a Year, he was running Porter, to carry up Coals and Wood; he was not truſted with any Keys; ſhe was truſted with the Keys to the Lodgings, and ſhe always kept the Key to the outward Door to the Lodgings, and there was no other Key; and that ſhe never deliver'd it to any Body, but ſometimes left it with the Lady *Peterborough*'s Houſe-keeper; ſhe never let this *Owen* have that Key, or any other Key to the Lodgings, it was below her to do it; he never went into the Inner Rooms, no farther than the Steps to the outward Room; he is a pitiful, beggarly Fellow; he laid the Steward's Cloth, and had no other Livelihood; ſhe lived with my Lady ſix Years and upwards, and all the while had the Key to the outward Door: She ſaith, you muſt firſt come into the Room called the Footmen's Waiting-Room, then into the Dining-Room, then into the Bed-Chamber; the Doors are ſideways: She made the Dutcheſs's Bed conſtantly; ſhe lock'd the Door, and kept the Key in her Pocket; ſhe had the Key of the Rooms 'till the Counteſs of *Weſtmoreland* had the Lodgings, which was not till the Duke and Dutcheſs left them, which was ten or twelve Days before *Bartholomew-tide*, ſix Years ago.

Henry Reyner ſaith, That he knew *Rowland Owen*, Street-Porter; he ſaith, That he (this Witneſs) could never get into the Lodgings, but when he had the Key from *Frances Knight*; he ſaith, *Owen* never came into the Lodings, but had a Key to a Houſe where the empty Bottles were, which was without the Lodgings; and he himſelf could not get into the Lodgings but by *Frances Knight*; he never had the Key in his own Poſſeſſion; he never ſaw *Owen* farther than the Paſſage-Room; he ſaith, that the Doors are not oppoſite to one another; he ſaith, *Frances Knight* never gave him the Key; he always found her there to open the Doors, or in the Room: he never had any Key that would open the Lodgings; *Owen* never told him that he caught the Dutcheſs in the Manner as is ſaid; he knows not of any Livelihod he had, beſides laying the Steward's Cloth: *Owen* had Wages from the Duke, and lodged at the Duke's Houſe in St. *James's*; he ſent Bottles, Pewter Plates, Forks and Spoons, Bread, and Linnen ſometimes by him, from the Duke's Houſe to the Lodgings in *Whitehall:* When he was not there to receive them himſelf, he gave him Directions to deliver them to *Frances Knight*, or gave him the Key of the Cupboard. Being aſk'd whether he hath ever gone by another Name than *Reyner?* We deſired to be excuſed, and refuſed to anſwer; he refuſed alſo to anſwer, whether he had known any Lady go by the Name of *Bateman:* Afterwards he ſaid, He did know one to do ſo. He ſaith, ſhe went by the Name of the Dutcheſs of *Norfolk:* He ſaith, it was the Dutcheſs of *Norfolk* that went by the Name of *Bateman*, and ſhe went ſo he believes for a Year; it was at *Lambeth*, but he knows not at whoſe Houſe there; he never ſaw *Germaine* there; it was a Year, or Half a Year ſince, he knows not certainly; the Houſe is called by the Name of *Scriber*'s Houſe, a Dyer; he never ſaw Mr. *Germaine* at *Scriber*'s with the Lady *Bateman*; he ſaith, he himſelf went by the Name of *Goodman*, when he lived with this Lady *Bateman*; he ſaith, that he knows not that *Germaine* was ever at *Lambeth*, by that Name, or any other: He ſaith, he never paid any Rent for the Houſe at *Lambeth*, nor knows that *Germaine* paid any for it; but he ſaith, he was a Servant to the Dutcheſs at *Lambeth*, but knows not what Office he was in, but ſhe paid him his Wages.

Henry Reyner, examined to what *Rowland Owen* ſaid at his ſecond Examination, ſaith, he never gave him the Key of the Lodgings, and ſaith, he never had the Key of the Lodgings.

Margaret.

The following Obſervations were publiſhed with the above Proceedings, in 1692; *by her Grace's Friends.*

Obſervations upon the foregoing Evidence.

WE are in the *firſt Place* to conſider, and compare the Evidence on both Sides. *Secondly*, To examine the Credit of the Witneſſes. *Thirdly*, The reaſonable Probability of the Matters Sworn, according to the common Courſe and Practice of the World.

Owen ſwears, That being ſent by *Henry Reyner*, the Duke's Butler, to carry the Things out, and the Lodgings being open, he ſaw Mr. *Germaine* and the Dutcheſs in Bed; and to countenance the Story, he ſays, That two of the Doors are ſtraight forward, giving to underſtand that the Doors being open, and one againſt another, a Body may ſee the Bed out of the firſt Room into the third; that *Reyner* gave him the Key of the outward Door, and upon the unlocking of it he made this Diſcovery.

Frances Knight encounters this Evidence with a Depoſition, that ſhe kept the Key of the outward Door herſelf, and delivered it to nobody, but now and then to my Lady *Peterborough*'s Houſe-keeper: That *Owen* never went into any of the inner Rooms, and that the Doors are ſideways.

Henry Reyner ſaith alſo, That he himſelf could not get into the Lodgings but by *Frances Knight*; that he never gave *Owen* the Key, nor ever had it in his Poſſeſſion; that he never ſaw *Owen* beyond the Paſſage-Room, nay, that *Frances Knight* never gave him the Key, but that he ſtill went to her to open the Door, and that he never had any Key to the Lodgings; that whenever he ſent *Owen* with Plates, Spoons, and the like, from the Duke's Houſe to the Lodgings in *Whitehall*, he was either there himſelf to receive them, or directed *Owen* to deliver them to *Frances Knight*.

Now, if theſe two Witneſſes ſpeak Truth, *Owen* was never in the inner Rooms at all; he never had the Key of the outward Door, and the Doors are not ſtraight forward as *Owen* ſwears they are, which is a Matter of Fact eaſily cleared.

As to the Credit of *Rowland Owen*, *Edward Sylveſter*, *John Jones*, and *Edward Cooke* are produced in his Favour. The firſt ſwears, he never knew him ſteal or cozen, as if the caſe were Pilfery. The ſecond, That *Owen* might have done him Wrong, and did not, and thence infers that he would not take a falſe Oath. The third, That he knows nothing to the contrary of his being an honeſt Man. So that here are three Surmiſes for the Reputation of *Owen*, which are juſt nothing to the Purpoſe, on the one Hand; and two point-blank Proofs, upon Oath, againſt him on the other; and not one Syllable all this while to diſparage the Teſtimony of either *Knight* or *Reyner*; though there are ſeveral pinching Paſſages in the Evidence, that, if they were falſe, might be detected by Hundreds of Witneſſes. And for an Inſtance of *Reyner*'s Tenderneſs of an Oath, he has own'd ſome Things, upon the Cloſe of his Examination, to the ſeeming Prejudice of the Dutcheſs herſelf. This is meant of their going by borrowed Names; but as Things ſtood at that time, with many Perſons of Honour, under her Grace's Circumſtances, it was no Scandal to conceal either their Names or their Abodes. But as to the true Reaſon of the Dutcheſs's Retirement, and living in a Manner ſo *Incognito:* The Earl of *Peterborough* falling deſperately ſick in the *Tower*, her Grace came over upon it, from beyond the Seas, to be within Diſtance, in Caſe the Sickneſs ſhould have proved mortal. The Dutcheſs had at that Time nothing to live upon but an Exhibition from her Father, and one Half of that was made over too for the Payment of her Debts; ſo that not being in a Condition to appear anſwerable to her Quality, ſhe thought herſelf bound in Honour, Prudence and Juſtice to retrench her Expences, which ſhe could not better do, than by ſuch a Retreat.

It is in the next Place to be obſerved, how *Owen* interferes with himſelf; the Lodgings, he ſays, being open, he ſaw Mr. *Germaine* in Bed with the Dutcheſs of *Norfolk*, the Dutcheſs leap'd out of the Bed, *&c.* This muſt naturally be underſtood to have been upon the opening of the firſt Door; and to the end it ſhould be taken ſo, he ſays that the two firſt Doors were ſtraight forward, and that the third turns a little. Now if ſo, How could he ſee the Bed out of the firſt Room into the third? And then he forgets himſelf again, in ſaying that the ſecond Door was not cloſe ſhut, and the third open; ſo that he has now doubled the Difficulty: There was no ſeeing into the Bed-Chamber, both becauſe the ſecond Door was almoſt cloſe, and becauſe the third was ſideways. It is to be noted alſo, that the Bed ſtands quite out of Sight of the Bed-Chamber Door, which is ſufficient of itſelf alone to overthrow *Owen*'s Teſtimony. But upon ſecond Thoughts, he takes himſelf tripping, and inſtead of mending the Matter, makes it worſe; it comes into his Head by this Time, that there was no ſeeing them in Bed out of the firſt Room, and ſo thinks to help it out with a Flam at the wrong End of his Information, that indeed he was in at the third Door when the Dutcheſs leap'd out of her Bed. Now, to take the Tale his own way, can any Body imagine, that *Owen* ſhould unlock the outward Door, lay down his Lumber, paſs theſe two Rooms into the third, the Dutcheſs and Mr. *Germaine* both awake too, and all this Noiſe not give them the Alarm?

To come now to the Probability of the Thing, *Reyner* gave him the Key, he ſays, only for once, it ſeems, for he never had it either before or ſince. Has not this the Face now of a Contrivance, calculated for a particular Turn? Is it not highly improbable again, that a pitiful, drudging Fellow, that earn'd his Bread by doing Porter's Work for the Family, ſhould have the Dutcheſs's Bed-Chamber lain open to him? And ſo for the Morning-Gown, and *Germaine*'s hiding himſelf in the Bed, had they no other Cloaths or Garments lying by them? That *Owen* ſhould have the Luck to ſee juſt this, and nothing elſe. But his Leſſon was to ſwear *Nudus cum Nudâ*, and *Solus cum Solâ*, to bring the Proof up to the Straitneſs of the Law, and that was the Part he had to play. Or, to take the Caſe yet another way: If *Owen* had ſeen them out of the firſt Room, can any Body think he would have ventur'd after that into the Bed-Chamber? Or, if he did not ſee them in the firſt Room, what had he to do in the other Room at all? But over and above all the reſt, for an Amour of this Quality, to be carried on thus in the Face of the Sun, the Doors and the Curtains open; let any Man ask his own Conſcience, if he does not look upon it as an Impoſture, without a Precedent from the Creation to this Day.

Margaret Ellwood *examined on the Behalf of the Duke of* Norfolk, *againſt the Dutcheſs* *.

Margaret Ellwood ſaith, She had a Company to ſee the Lodgings at *Windſor*, in the firſt Year of King *James*'s Reign, about three or four of the Clock in the Afternoon; a Woman told her that my Lady was not there, but ſhe opening the Door, ſaw my Lady upon the Stools in an ill Poſture, Mr. *Germaine*'s Breeches were down; he pulled them up, and laid his Hand on his Sword, ſaying, *God damn you for a Whore, How have you the Impudence to come here?* My Lady bid him kick me down; he ſcattered ſome Concerns, that is, Man's Nature, on the Boards; ſhe ſaw no Nakedneſs but her Knee, or a little above. Another Time after, ſhe found *Germaine*'s Handkerchief and Ruffles in my Lady's Bed; my Lady's Woman ſaid there was *Germaine*'s Name upon them. Another Time, ſhe ſaw Mr. *Cornwal* let Mr. *Germaine* out of my Lady's Cloſet: She ſaw *Germaine*'s Legs within her's when ſhe came the firſt Time into the Room, and his Breeches were about his Heels. The firſt Time was in *Bartholomew-Fair* Time; Mrs. *Knifeton* told her it was *Germaine*'s Linnen.

Witneſſes produced to the Credit of Margaret Ellwood.

CAptain *Charles Potts* ſaith, He hath known *Margaret Ellwood* ſix or ſeven Years, and that ſhe was Servant to the Duke of *Norfolk*, and that ſhe behaved herſelf well and prudently there; her Huſband was a Soldier in his Company, and was, as he hath heard, a Shoemaker.

John Faucet ſaith, he knew *Margaret Ellwood*, while ſhe was the Duke of *Norfolk*'s Servant, about two or three Years; he never heard any Scandal, or Diſgrace of the Woman, but that ſhe carried herſelf civilly; he knows not whether ſhe kept an Alehouſe in *Windſor*.

Lawrence Purcell ſaith, He knows *Margaret Ellwood*, ſhe lived in his Houſe in *Brooks-Market*, next *Eaſter* will be two Years: He knows nothing amiſs of her; ſhe took Care for her Living; he never knew her keep ill Hours; ſhe took a Room in his Houſe, ſome of the Rent is behind, he thinks thirty-two Shillings, her Huſband and the Woman gave him a Bond for it.

Witneſſes ſworn on the Behalf of the Dutcheſs, for invalidating the Teſtimony of Margaret Ellwood.

Michael Haddon ſaith, He hath been acquainted with *Margaret Ellwood*, four, five, ſix, or ſeven Years: When he firſt knew her, her Huſband was a Soldier in the Duke's Company, and ſhe was, as he hath heard, an under Houſekeeper; he believes ſhe was turned out of the Duke's Service; afterwards ſhe ſold Drink in a Houſe of his at *Windſor*, and went away in his Debt by Night, without paying him; ſhe took her Goods with her; this was in 1689.

Joyce Heath ſaith, She knows *Margaret Ellwood*; ſhe lived in a Cellar of her's, and in a Back-Houſe of her's, but not at the ſame Time, three Quarters of a Year, in *Brooks-Market*, about *Michaelmas* laſt; ſhe paid the Landlady but eleven Shillings and Six-pence: Her Courſe of Life was not good; ſhe was in an inferior Condition, her Huſband was a Cobler in a Stall, and ſhe had five Children.

Mary Trevis ſaith, She hath but a ſlender Acquaintance with *Margaret Ellwood*; but the ſaid *Ellwood* ſent to borrow a Scarf of her the *Sunday* after *Chriſtmas* laſt; and ſaith, That going the next Day for her Scarf, ſhe, the ſaid *Ellwood*, deſired it for a longer Time, for it might be five Pounds in her way, for ſhe was to be a Witneſs for the Duke of *Norfolk*, who was to be divorced from his Dutcheſs, and that the Duke ſent his Chariot for her: I told her there could be no Separation in Marriage, except Adultery could be proved; and that I could not think it reaſonable to believe, that ſo mean a Servant as ſhe could be a Spectator to ſo ill an Action as that was. She ſaid, ſhe thought ſhe could do the Duke no Kindneſs in going, for ſhe never ſaw any other Harm by the Dutcheſs, than that ſhe ſaw Gentlemen come to and fro to the Houſe; but the Duke had ſent for her, and ſhe muſt go.

Mary Jones ſaith, She knows *Margaret Ellwood*, who ſhe heard ſay, the Lady Dutcheſs ſent for her a little before *Chriſtmas* laſt, and ſaid, *Margaret*, I deſire you to ſpeak the Truth, I would not have you diſoblige my Lord in the leaſt. *Margaret Ellwood* ſaid, She never knew no Harm by her Grace. The Dutcheſs demanded the Keys of her, and ſhe gave them her; and the Dutcheſs gave them to her, the ſaid *Ellwood*, again the next Morning: The Diſcourſe was a few days before *Chriſtmas* laſt.

Anne Roſs ſaith, She knows *Margaret Ellwood*, who came to her Houſe, and told her, about two Months ſince, that the Duke of *Norfolk* ſent for her to Witneſs, for there would be a Divorce between the Duke and Dutcheſs; and I aſking her what ſhe could ſay, She anſwered, ſhe could ſay little, but that ſhe knew no Ill by the Dutcheſs; but that ſhe was a good, generous ſpirited Lady, and ſhe never knew any ill Action by her in her Life; I bid her have a Care what ſhe went about, for that would do the Duke but little Kindneſs. The Dutcheſs, ſhe ſaid, called for the Keys of her Lodgings, but gave her them back the next Morning. She ſaith, That laſt Week ſhe went to her to demand a Debt, and ſhe promiſed to come and pay it her. She ſaith, ſhe went to the Porter at the Duke's to aſk for her; but the Porter ſaid ſhe was not within; but meeting with her Child there, ſhe ſaid ſhe was within, and brought her, the Witneſs, to her in the Duke's Houſe, and ſhe made her very welcome, and ſent her Huſband with her, the Witneſs, to ſee her Children's Lodging in the *Green Mews*, near the Duke's Houſe: She ſaith, *Ellwood*'s Huſband told her, upon aſking how the Cauſe went, that his Wife was to have 30 *l. per Annum* ſettled on her, and to go to *Windſor* to live, and to have the ſhewing the Caſtle: She ſaith, That upon her going to ſee the Children, and commending their Lodgings, that *Ellwood*'s Maid, or Woman, told her they paid four Shillings a Week for the Lodgings: She ſaith, the Children were well cloathed, with good Frocks and Top-knots, and they uſed to be ragged, and that her Huſband uſed to allow her but Six-pence a Day for her and her Children: She ſaith, That *Margaret Ellwood* told her ſhe had been with the Dutcheſs, and that her Grace bid her do nothing to diſoblige her Lord, but ſpeak the Truth.

Mary Roſs ſaith, She knows *Margaret Ellwood*; She ſaith, ſhe heard *Ellwood*'s Huſband ſay, that the Duke of *Norfolk* had taken Care of his Wife and Children, and ſettled thirty Pounds *per Annum* on them, and her Habitation was to be at *Windſor Caſtle*; and ſaid, that my Lord Duke would be divorced, for he was to have a great Fortune of Twenty Thouſand Pounds a Year: This Diſcourſe was the laſt Week, and her Father was preſent, and her Mother was juſt gone out.

Thomas

* *Obſervations upon the foregoing Evidence.*

Here's a foul and a ſuſpicious Story in this Depoſition of *Margaret Ellwood*, wherein ſhe ſtands ſingly upon the Credit of her own Teſtimony, without any Colour or corroborating Evidence to ſupport it: Only Capt. *Charles Potts*, *John Faucet*, and *Lawrence Purcell*, are produced to ſpeak to her Perſonal Reputation. The firſt ſays, ſhe behaved herſelf well and prudently in the Duke's Houſe; the ſecond and third, that they know no Ill by her.

There were produced on the Behalf of the Dutcheſs, and to invalidate the Teſtimony of *Margaret Ellwood*, theſe ſix Witneſſes, *Michael Haddon*, *Joyce*, *Heath*, *Mary Trevis*, *Mary Jones*, *Anne Roſs*, and *Mary Roſs*. *Mary Trevis*, *Mary Jones*, and *Anne Roſs*, do all depoſe, that about *Chriſtmas* laſt, ſpeaking of the Dutcheſs, and Mr. *Germaine*, *Margaret Ellwood* told each of theſe Witneſſes reſpectively, that ſhe never ſaw or knew any Thing of Ill by the ſaid Dutcheſs; and yet *Ellwood*'s Accuſation bears Date in the firſt Year of King *James*. *Mary Trevis* ſwears farther, that upon the next *Sunday* after *Chriſtmas* laſt, *Ellwood* told her, upon borrowing a Scarf of her, that it might be five Pounds in her way, for the Duke was to be divorced from the Dutcheſs, and he had ſent his Chariot for her, and ſhe was to be a Witneſs. *Anne Roſs* ſpeaks alſo to the ſame Effect, how *Ellwood* told her there would be a Divorce, and the Duke had ſent for her to be a Witneſs; and likewiſe ſaith, That *Ellwood*'s Huſband told her, that his Wife was to have thirty Pounds *per Annum* ſettled upon her, and live at *Windſor*, and have the ſhewing of the Caſtle.

Mary Roſs ſpeaks to the ſame Purpoſe alſo, with the Witneſs above, as to what *Ellwood*'s Huſband ſaid of *Windſor*, the Settlement, and the Divorce; adding alſo, that the Duke was to have a great Fortune (according to the common Rumour then about the Town); *Mary Roſs*'s Father was by, and heard all this: It was about a Week before the Date of the Information that Diſcourſe had paſſed.

Nay, the Dutcheſs was ſo clear in the Matter, that ſhe ſent for *Ellwood* a little before *Chriſtmas* laſt, and bid her ſpeak the Truth; as *Ellwood* herſelf owned to *Mary Jones* and *Anne Roſs*.

To come now to the Quality and Credit of *Margaret Ellwood*. *Haddon* ſays, ſhe was his Tenant at an Alehouſe in *Windſor*, in 1689, carried off her Goods by Night, and went away in his Debt.

Heath ſaith, She lived in a Cellar, led an ill Courſe of Life; her Huſband was a Cobler in a Stall.

Anne Roſs ſays, That ſhe had five Children, and that ſhe had but Six-pence a Day Maintenance for herſelf and them.

This was her Condition till near *Chriſtmas* laſt, when all on a ſudden, as *Anne Roſs* depoſes, ſhe was taken into the Duke's Houſe, the Children new cloath'd, and trick'd up with good Frocks and Top-Knots, (which were till then all in Rags,) Lodgings provided for them at four Shillings a Week, and a Maid to look to them, and no viſible Means of doing all this. But, in fine, the Change was not wrought by Miracle, and leans much toward the Diſcourſe before-mentioned, that *Anne* and *Mary Roſs* had with *Ellwood*'s Huſband.

The Queſtion, at laſt, is briefly this: Whether is to be believed a Woman under ſo many ſcandalous Circumſtances, and one that ſwears for herſelf too; or ſix Witneſſes againſt her of ſo unqueſtionable Probity, that not ſo much as one of them could be impeached by the other Party?

To paſs now to the palpable unlikelihood of the Story barely in itſelf; *Ellwood* was carrying Company, ſhe ſays, to ſee the Lodgings at *Windſor*, and opening the Door, ſhe ſaw and heard, as in her Depoſition. How came it now, that none of this Company ſhould be produced, or ſo much as named to ſecond *Ellwood?* For 'tis to be preſumed, they muſt needs hear and ſee what paſſed upon this Adventure, as much as ſhe herſelf did; or if ſhe had but named the Woman, who, ſhe ſays, told her my Lady was not there, it might have ſerved as a collateral Inducement, for the giving of ſome Sort of Credit to it. But in a Matter of this Importance, to have ſo many Witneſſes within Reach of being found out, and none to appear, looks very ill on their Part, that were ſo much concerned to produce them: And ſo for *Germaine*'s threatening her, and the Dutcheſs's bidding him kick her down, no People in their right Wits but would have try'd to ſtop her Mouth with fair Words and a good Bribe in ſuch a Caſe as this, rather than provoke her, by Menaces and ill Language, to run open Mouth to the Duke with the Story, in Revenge, when ſhe had the Ducheſs's Honour and Eſtate ſo abſolutely at her Mercy.

As to the Buſineſs of Mr. *Germaine*'s Handkerchief and Ruffles, and his being let out of the Cloſet, the Contrivance is all of the ſame Piece with the reſt; for why were not the Perſons named in her Depoſition produced to prove the Particulars therein mentioned, as well as *Ellwood?* It is moſt certain, that the Proſecutors could eaſily have done it, and that it was properly their Buſineſs and Intereſt ſo to do; for what ſignifies *Ellwood*'s ſingle Teſtimony, under her Circumſtances, without corroborating Proofs? She tells us a Tale, of Company to ſee the Lodgings; a Woman that told her ſo and ſo; and another Woman and a Gentleman that ſaid, and did this and that, and yet not one Creature at laſt to ſecond her Depoſition, nor any Pretence of an Exception to the Evidence on the other Side.

Thomas Hudſon *examined on the Behalf of the Duke of* Norfolk, *againſt the Dutcheſs* *.

THomas *Hudſon* ſaith, That the Duke of *Norfolk* being at *Portſmouth*, he was Butler at *Windſor*, when *Germaine*, and the Dutcheſs, and *Cornwall* went to play; *Germaine* ſent his Footman for clean Linnen, which he brought the next Morning. Mrs. *Gwin* ſaid to the Dutcheſs, The Dog would have lain with me, but ſhe would not lay the Dog where the Deer laid, for ſhe knew my Lady Dutcheſs would accept of him; after that, he ſaw a Shirt and a Waiſtcoat in the Cloſet, which my Lady's Woman and *Anne Burton* took away. My Lord being abſent, we murmured amongſt ourſelves, that my Lord was wronged: I told my Lord; whereupon my Maſter *Cragg* had me to my Lord *Peterborough*'s Lodging, and threatened me, that he would prefer me to his Brother *Richards*, who turned me off in *Germany*. This was, he thinks, in *December*, or *September*, 1685. Mrs. *Gwin* ſpoke this in the *Green Room*, and he was in a Cloſet hard by, and the Door open, and ſo heard it.

Witneſſes ſworn on the Behalf of the Dutcheſs, for invalidating the Teſtimony of Thomas Hudſon.

WIlliam *Purchaſe* ſaith, That he knows *Thomas Hudſon*, who, he ſays, was never Butler to the Duke of *Norfolk*, either at *Windſor*, or any other place: He, the Witneſs, was Under-Butler himſelf, *Reyner* was Butler in 1685, and the Witneſs was Under-Butler. He ſaith, *Hudſon* waited on the Gentleman of the Horſe and the Steward; he was not the Duke's Servant, nor waited at the Table that he knows of; he was never ſuffered to come into the Room when the Duke or Dutcheſs was at Play. He ſaith, he, the Witneſs, was not at *Windſor* at the Time when the Duke of *Norfolk* was at *Portſmouth*, but he was ſent to *Drayton* in *Northamptonſhire*, and was then the Duke's Servant as Under-Butler; he knows not that *Reyner* was; he ſaith, he is now Servant to the Lord *Peterborough*.

Col. *Jacob Richards* ſaith, That he knows *Thomas Hudſon*, he was his Servant, he was recommended to him by Mr. *Cragg*, he was his Footman; he believes he was in his Service four Months, he parted with him, becauſe he found him a tricking Fellow; he told him his Brother *Cragg* was to be killed by one *Curry*, and another *Iriſhman*: He, the Witneſs, writ to his Brother *Cragg*, and he adviſed the Witneſs to part with him, for he did not think him fit to be truſted in his Travels; whereupon he paid him his Wages, and gave him Money to bear his Charges to *England*, and ſent a Trunk by him. One Mr. *Negus* travelled with the Witneſs; and his Father, who then, and now lives with the Duke of *Norfolk*, writ to us, That he did not think it fit for us to keep ſuch a Servant, for he was a dangerous fellow, or to that Effect. *Hudſon* never owned any thing of the Adultery to the Witneſs, but poſitively declared to him he knew nothing of it: This was in *January*, 1685. He ſaith, that *Cragg* writ him Word, that *Hudſon* muſt needs be a tricking Knave. He negligently told the Witneſs this of the Adultery; Curioſity made him aſk it of him, for he had lived with the Duke and Dutcheſs, and it was natural for him, the Witneſs, to aſk ſuch a Queſtion. He ſaith, he believes *Hudſon* ſaw ſome of his Letters: He ſaith, there were printed Papers in the Trunk he ſent, but nothing of any conſiderable Value: He ſaith, *Hudſon* never cheated him of any thing that he knows of; he hath truſted him with a 100*l.* at a time: The Trunk was delivered in *England*, and he believes he knew what was in it: He ſaith, that aſking *Hudſon* whether he knew any thing of the Adultery charged on the Dutcheſs of *Norfolk*? *Hudſon* ſaid, he knew nothing of it: He, the Witneſs, told him, that it was ſaid, that it was he that had betrayed the Dutcheſs; he ſaid, it was a falſe Accuſation, for he knew nothing of it.

Anne Burton *examined on the Behalf of the Duke of* Norfolk, *againſt the Dutcheſs* †.

ANne *Burton* ſaith, She was ſervant to the Duke and Dutcheſs of *Norfolk*: When the Duke was gone to *Portſmouth*, ſhe was at *Windſor*, when my Lady went to *London* with *Germaine*. When my Lady came Home, after Supper ſhe was in great Haſte to go to Bed; when ſhe was undreſt, ſhe ſaid ſhe would lock us out, becauſe ſhe would not be diſturbed before Eleven o'Clock the next Morning, though the King and Queen ſhould come. *Hudſon* told her *Germaine* was ſtill in the Houſe, whereupon we laid Chairs on the back Stairs, that we might hear him if he came down; the Chairs were not removed the next Morning; when *Germaine*'s Man came with Linnen, he ſaid his Maſter was there. My Lady ordered a Fire to be made in my Lord's Room, where, when ſhe was come, Mrs. *Nelly Gwin* came in, and aſked her how ſhe liked her Night's Reſt? And being aſked for *Germaine*, ſhe ſaid ſhe knew nothing of him. My Lady complaining of her Hair being out of Order, *Nelly* anſwered, It was a hot Night with her, enough to put her Hair out of Powder and Curl too. Quickly after, *Cornwall* came in, and aſked for *Germaine*; and my Lady ſaying, ſhe knew nothing of him, *Nelly Gwin* ſaid, I queſtion not but he will come out by-and-bye like a drowned Rat; with that, while I was cleaning the Dining-Room, Mrs. *Knifeton* called me, and ſhewed me in a Cloſet *Germaine*'s Shirt and Waiſtcoat, and afterwards making my Lady's Bed, ſaw there were two Prints where two had laid. The Shirt and Waiſtcoat were ſent by the Duke to the Lord *Peterborough*'s: She ſaith ſhe is a ſingle Woman, and was never married; this was about *Bartholomew-Tide*, ſix Years ſince: She ſuppoſeth the Bed was ſtained both by a Man and Woman.

Witneſſes ſworn on the Behalf of the Dutcheſs, for invalidating the Teſtimony of Anne Burton.

ANne *Burton* againſt herſelf: Upon ſeeing ſeveral Witneſſes come in, to prove her to be a married Woman, (though ſhe had ſworn the contrary,) was called to the Bar of the Lords, and there ſaith, She was not married when ſhe was at *Windſor*; ſince that ſhe hath been married. *Anne Burton* was her Maiden Name; her Huſband's Name is *Benſkin*.

Suſan Wheatcroft ſaith, That ſhe knows *Anne Burton*, and that ſhe lodged in her Houſe ſixteen Weeks, with her Huſband, *Robert Benſkin*; and ſhe ſaid, ſhe ſhould have a Parcel of Money to be a Witneſs for the Duke of *Norfolk*, againſt his Dutcheſs; this was about *March* two Years ſince. Her Huſband ſaid, he ſhould have a Commiſſion from the Duke of *Norfolk*, and he ſhould have a great deal more from him, for his Wife is to be a material Witneſs againſt his Dutcheſs. They did not pay her, the Witneſs, when they went away, nor ſince; they owed her ſeven Pounds fifteen Shillings; ſhe hath been ſeeking after them, and could not find them; ſhe left a Trunk with Raggs in it, and went away privately, carrying away her Goods by Parcels.

Mary Sheriff ſaith, That ſhe lives next Door to *Warwick-Houſe*, in *Holborn*, and hath kept Houſe there near ſeven Years, and hath known *Anne Burton* two Years; ſhe lived with my Lord *Clare*: While ſhe was there a Soldier courted her; they uſed to come every Day for a Fortnight or three Weeks to her Houſe to drink; ſhe owed her about three Pounds: She hath told her ſeveral Times ſince, that ſhe was to be a Witneſs for the Duke of *Norfolk* againſt his Dutcheſs, and ſhe was to have Money for ſpeaking: She heard Mrs. *Tod* bid her always keep in a Story, and ſhe would do well: She, the Witneſs, heard them talk of thirty or forty Pounds Mrs. *Burton* ſhould get by being a Witneſs; ſhe is not paid the three Pounds, nor knows not whether ſhe ſhall be paid; but laſt Winter ſhe found her in *Henrietta-Street*, and ſhe deſired her, the Witneſs, not to take Notice of her Name, nor what ſhe ſaid to her, for ſhe, the Witneſs, ſhould have her Money in a ſhort time, when the Trial was over. She told her the ſame a little before that, when ſhe lived at Major *Wildman*'s; ſhe takes it to be this Winter was Twelve-month; ſhe thinks it was the Duke of *Norfolk*'s Trial: She, the Witneſs, keeps a Coffee-Houſe, called *Joe*'s Coffee-Houſe.

William Purchaſe ſaith, That he knows *Anne Burton*; ſhe declared to him about a Year and a Half after the Dutcheſs was charged with lying with Mr. *Germaine*, that ſhe knew nothing of it, and that the Dutcheſs was wronged as much as ever any Woman was, and that ſhe hoped to ſee thoſe puniſhed that were the Cauſe of the Accuſation. He ſaith, he went to ſee her as a Fellow-Servant, and he was not ſent by any one, and going to drink together, they fell into this Diſcourſe: He hath talked of this Matter ſeveral times (particularly to Mr. *Welborne*) ſince this Buſineſs was ſpoken of, having heard ſhe was to be a Witneſs againſt the Dutcheſs.

Simon

* *Obſervations upon* Thomas Hudſon's *Evidence*.

HUdſon ſwears himſelf the Duke's Butler at *Windſor*. *William Purchaſe* ſwears that *Hudſon* was never the Duke's Butler.

Hudſon ſays, that they went to Play, and that he over-heard Mrs. *Gwin* out of a Cloſet, ſaying as in the Evidence. Mrs *Gwin* is a dead Witneſs, and *Hudſon* but a Cloſet Witneſs, which is little better; now *Purchaſe* ſays again, that *Hudſon* was never ſuffered to come into the Room where the Duke or Dutcheſs were at Play.

Hudſon ſays likewiſe, that the Servants murmured amongſt themſelves, that my Lord was wronged, and that he told my Lord of it. Colonel *Jacob Richards* depoſes, That he himſelf telling *Hudſon* of a Talk, that he had betrayed the Dutcheſs, and ſpeaking of a Noiſe of the Adultery; *Hudſon* made Anſwer, That it was a falſe Accuſation, and knew nothing of it.

Now, as to *Hudſon*'s Credit, he was Colonel *Richard*'s Footman, who turned him off as a tricking Fellow, and not fit to be truſted. Mr. *Negus*, the Duke's Servant, both then and now, was of the ſame Opinion too, and adviſed by Letter the putting of him away, as a dangerous Fellow.

The Story of Mr. *Germaine*'s ſending his Man for clean Linnen over Night, and the bringing it next Morning, has little in it, even ſuppoſing the Fact to be true. *Firſt*, The Order was given bare-faced, and conſequently no Myſtery in it. *Secondly*, There was a Set-Company at Play, and that was not an Opportunity for a Love Intrigue. *Thirdly*, It is no new Thing for People to ſit up all Night at Play, and change their Linnen next Morning, without any Offence to Honeſty or good Manners, where they may have a Privacy ſo to do it. And if my Lady's Woman and *Anne Burton* took away the Shirt and Waiſtcoat, as he ſays they did, there's no great hurt in that neither; though it is much to have three ſuch Confidants to ſuch a Secret, an under Footman privy to the Intrigue of *Germaine*'s Man going and coming, and raking in the Women's Cloſet among the Linnen,

But ſtill the only proper Witneſſes are kept behind the Curtain: *Anne Burton* indeed is produced, and we ſhall ſee what kind of Evidence ſhe proves herſelf in the next Place.

† *Obſervations upon* Anne Burton's *Evidence*.

ANne *Burton* has the Story over again of the Shirt and Waiſtcoat, and of Mrs. *Gwin*'s Diſcourſe, to which enough is ſaid already, and more needs not be ſaid upon the Evidence of a Perſon ſo manifeſtly forſworn. In her firſt Oath, ſhe ſwears herſelf a ſingle Woman, and that ſhe was never married; but upon Witneſſes appearing to prove the contrary, ſhe was called to the Bar again, and owned herſelf to be married, and that her Huſband's Name was *Benſkin*.

This *Anne Burton* had been a Lodger ſixteen Weeks to *Suſan Wheatcroft*, as appears by *Wheatcroft*'s Depoſition; ſhe conveyed her Goods privately out of the Houſe by Parcels, and ſlipt away ſeven Pounds fifteen Shillings in her Debt; ſhe told *Wheatcroft* that ſhe was to be a Witneſs againſt the Dutcheſs, and that ſhe ſhould have Money; her Huſband ſaying alſo, that his Wife was to be a material Witneſs againſt the Dutcheſs, and he himſelf ſhould have a Commiſſion, and more than that too.

Mary Sheriff ſays, That preſſing *Anne Burton* for three Pounds that ſhe owed her, her Anſwer was, That ſhe was to be a Witneſs for the Duke againſt the Dutcheſs, and that in a ſhort Time ſhe ſhould have Money, and then ſhe would pay her.

William Purchaſe ſwears, That about a Year and Half after the Report concerning the Dutcheſs and Mr. *Germaine*, *Anne Burton* told him the Dutcheſs was wronged, and ſhe hoped to ſee her Accuſers puniſhed; and that he himſelf hath often ſpoke of this Paſſage to ſeveral, and particularly to Mr. *Welborne*. Take Notice, that theſe Depoſitions for the Dutcheſs, as well as the former, have paſſed without any Contradiction: That *Germaine*'s Man is neither produced nor named; the Linnen (if any) brought as openly as it was ſent for. No Mrs. *Knifeton* appears, and the whole Depoſition reſts upon the Credit of a forſworn Woman.

Simon Varelſt *examined on the Behalf of the Duke of* Norfolk, *againſt the Dutcheſs* *.

SImon *Varelſt* ſaith, That he was at *Windſor* to draw the Dutcheſs of *Norfolk*'s Picture about ſix Years ſince, and had the Duke's Cloſet to put the Pictures in: When he had done, and had been at Home two or three Days, *Germaine* came to him much concern'd, and ſaid, You can do the Dutcheſs an extraordinary Kindneſs, and will oblige the Lord and Lady *Peterborough* in the higheſt degree; then he ſhewed me a Letter of the Dutcheſs to me, and read it to me: before that he told me there was a Shirt and Waiſtcoat, and they are known to be his: He ſaid, I deſire you to ſave the Dutcheſs's Honour; I deſire you will be ſo much a Gentleman as to own them to be yours, and that you left them there: I anſwered, I was much concern'd there ſhould be ſuch a Trouble, but I deſired to be excuſed, I could not do it without Prejudice. He told me the Lord and Lady *Peterborough* had diſcourſed the Duke of *Norfolk* upon it, and if it were own'd but to be my Linnen, their Diſcourſe had wrought ſo much upon him, that if there came any Evidence to aſſiſt them, he would leave off the Purſuit. I refuſed ſtill; he offered me a Purſe of Gold, and told me I ſhould make my Fortune by it; but I ſtill refuſing, Mr. *Germaine* went away very much diſcontented: My Wife being in the next Room, over-heard the Diſcourſe between *Germaine* and me, and told it, and ſpoke of it, or elſe I had not been here now.

John Rothmell *ſworn a Witneſs on the Behalf of the Dutcheſs of* Norfolk, *for invalidating the Teſtimony of* Simon Varelſt.

JOhn *Rothmell* ſaith, That he lives in *Crown-Court* in *Covent-Garden*, and is a Taylor: He ſaith, he knows *Simon Varelſt*, and that he, the Witneſs, married his Half-ſiſter: He ſaith, that about a Quarter of a Year after the Buſineſs of the Dutcheſs happen'd at *Windſor*, he was at *Varelſt*'s Houſe about Eleven of the Clock in the Night, and *Varelſt* lock'd the Door, and told him, he had diſparag'd him by marrying his Siſter, and ſaid, he would be his Death, and drew his Sword, and commanded him to ſtrip, that he might ſlaſh him at his Pleaſure; and the ſaid Witneſs did ſtrip for fear of his Life, knowing his Frenzy; and he ſtruck the Witneſs above a dozen times with his Sword, and threatened ſtill to have his Life, if he, the Witneſs, did not fetch his Wife down that Night, which was about twelve o'Clock, and which was about ſix Weeks after ſhe lay in; and he was to bring her to be whipt, and to bring ſix Rods with him: Upon his, the Witneſs's Promiſe to do this, he let him go, and he hath not ſeen him ſince, but in the Street. He had Half a Year before that been diſtracted for ſix Weeks, and he, the Witneſs, fetch'd Dr. *Teniſon* to him once, and the Doctor came ſeveral times afterwards to him. One Night in that Sickneſs, he got from the Woman that watch'd him, and run about two Hours in his Shirt and Waiſtcoat, in a froſty Night, and cut his Feet, and was brought Home by the Watch: He ſaith, his, the Witneſs's Wife, was to have been here this Day as a Witneſs, and was here, but not having an Hour to reckon, and being ill, is gone Home with her Midwife: He ſaith, he never durſt go near *Varelſt* ſince he abus'd him: He ſaith, that Mrs. *Varelſt*, after ſhe came from *Windſor*, ſaid, That the Dutcheſs had ill People about her, and that ſhe believ'd her to be much wrong'd, and ſaid, ſhe could clear her about the Scandal of the Linnen that was found; for whether it was, or was not Mr. *Varelſt*'s Linnen, ſhe could do it; and ſaid, ſuppoſing I had brought my Huſband's Linnen down to be waſh'd, and the Landreſs fetching of it, ſhe might take it up, and leave ſome of it behind.

Thomas Foſter *examined on the Behalf of the Duke of* Norfolk, *againſt the Dutcheſs* †.

THomas *Foſter* ſaith, That he was Coachman to Mr. *Germaine*, and carried the Dutcheſs of *Norfolk* often, about two Years ſince, in his Coach, and brought her Home, and the Footmen have had four Half-Crowns given them; and *Marting*, a *Dutchman*, his Helper, called it *Huſh-Money*: It was by Night, againſt a Light, that he ſaw her Face in the Coach; it was about ſeven or eight of the Clock at Night, about this time a-Year; he had ſeen her Face once in the Day-time, ſhe looking out of a Saſh-Window, two Stories high, in Mr. *Germaine*'s Houſe, in *Park-ſtreet*; he knows her Face well enough; he hath ſeen her before, and ſince ſhe was married.

Witneſſes ſworn on Behalf of the Dutcheſs of Norfolk, *for invalidating the Teſtimony of* Thomas Foſter.

JOhn *Hall* ſaith, That he lives at the *Coffin* in *Tuttle-ſtreet*, and is a Joiner; he ſaith, he hath known *Thomas Foſter* two Years; and that about three Weeks ſince, they being drinking together, and talking concerning the Duke and Dutcheſs of *Norfolk*, he ſaid, Mr. *Germaine* had done ill Things by him, in turning him off in *Ireland*, and in turning him off here; and he was reſolv'd to be reveng'd of him.

Hoſea Grimſley ſaith, He lives with Mr. *Germaine*, and that he hath known *Thomas Foſter* above a Year and three Months, in Mr. *Germaine*'s Service; he heard him ſay, in the laſt Week of *December* laſt, in Mr. *Cook*'s Houſe, about three Days before he was turn'd away, That he thought it no more Sin to murder his Maſter, than it was to kill a Louſe; He ſaith, he hath lived with Mr. *Germaine* about a Year and a Half, and that he never ſaw the Dutcheſs of *Norfolk* with him; and that he hath, ever ſince he came to him, lived with him in the Place where he now lives: He ſaith, he never ſaw Mr. *Germaine* with a Woman that was called the Lady *Bateman*, nor knows any ſuch Name, or Perſon.

Thomas Lloyd *examined on the Behalf of the Duke of* Norfolk, *againſt the Dutcheſs* §.

THomas *Lloyd* ſaith, He knows one that went by the Name of the Lady *Bateman*, at her Houſe at *Vaux-Hall*; one *Germaine*, a Wine Merchant, took the Houſe; ſhe came thither about *Midſummer*, 1689. She was off and on there 'till laſt *Michaelmas*. He hath ſeen the Perſon that went by the name of the Lady *Bateman*, and it is the Dutcheſs of *Norfolk*. *Goodman* was her chief Man, and his real Name is *Reyner*. Her Brother, as was pretended, which he hath heard was Mr. *Germaine*, was the chief Man that came there; ſometimes he came once or twice a Week, ſometimes oftener; he's certain, as the Servants ſaid, it was Captain *Germaine* that came there; every Body ſaid it was he: He knows him not by his Name, but by Hear-ſay; if he could ſee him now, he could tell whether it was he; he hath not ſeen him ſince the Lady went away; he believes *Germaine* was there every Month in both the laſt Summers; he cannot ſay that *Goodman* was ever there when *Germaine* was there; he ſaw him ſeveral Times there in *May*, *June*, *July*, and *Auguſt*, 1691. *Germaine*'s own Hair was then pretty long: He cannot poſitively ſwear he was Captain *Germaine*; he ſuppoſes, if he ſaw him now, he could know him.

Witneſſes ſworn on Behalf of the Dutcheſs of Norfolk, *for invalidating the Teſtimony of* Thomas Lloyd.

ALexander *Herman* ſaith, That he ſerved Mr. *Germaine*; he hath left his Service a Year and a Half, about eight Weeks after he came from *Ireland* with the King; he ſerved him a Year and a Half: Mr. *Germaine* was in *Ireland* with the King, in the Summer, in the Year 1690. He went to *Ireland* two Days before the King that Summer; he continued there four Months: He believes he went the laſt of *May*, or the firſt of *June*; he came back with the King. He, the Witneſs, ſerved him all that while in *Ireland*, and ſaw him every Hour and every Day, and never ſtirr'd from him; he came from *Ireland* in the ſame Ship with the Lord *Villers*, the Earl of *Mancheſter*, and Mr. *Felton*; and he went to *Ireland* in the *Monmouth* Yacht, with the Envoys of *Holland* and *Brandenburgh*, and the Marquis *Mompavillon*. He ſaith, Mr. *Germaine* was at *Bruſſels* in *May* laſt: he ſaw him there, and ſpoke with him there: He ſaw the Lord *Villers* and the Lord *Lumley* there with him; he lodged in the ſame Tavern there with him, for four Days, and ſaw him not after: He, the Witneſs, coming then for *England*, left him there. He never knew

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* *Obſervations upon the foregoing Evidence.*

THere needs no more to the overthrowing of *Varelſt*'s Evidence, whatever it is, than the Teſtimony of *John Rothnell*, to prove him *Non Compos*; witneſs his Outrage upon *Rothmell*, the fantaſtical Freak of ſending at Midnight for ſix Rods to whip his Siſter-in-law; and another Fit, for a matter of ſix Weeks, when Dr. *Teniſon* made him ſeveral viſits to compoſe him, his Frenzy being ſo violent upon him, that he broke looſe from his Keepers in a froſty night, and ran up and down the Streets in his Shirt, till he was taken up by the Watch. This is the Sum of *Rothmell*'s Teſtimony, and not one Word oppos'd either to the Credit of the Witneſs, or the Truth of the Depoſitions. But it may not be amiſs, after all this, yet to ſpeak a few Words to the Likelihood of what *Varelſt* has here depos'd.

Mr. *Germaine* came to ſee him, he ſays, with a Letter from the Dutcheſs, which he read to him, and in the Name of the Lord and Lady *Peterborough*, deſir'd him to ſay, the Shirt and Waiſtcoat were his; but not one Word all this while of the Contents of the Dutcheſs's Letter. He ſays again, that the Shirt and Waiſtcoat were known to be his; now if they were known to be Mr. *Germaine*'s, what good could *Varelſt* do by taking the Matter upon himſelf; when he ſaw fair Words would not do, there was a Purſe of Gold offer'd him, and that would not work neither. The Dutcheſs and Mr. *Germaine* were wonderfully alter'd, ſure, in this Caſe, from what they were in the Buſineſs of *Owen* and *Ellwood*; there was no Purſe of Gold, or Dutcheſs's Letter to ſmother the Matter, but, on the contrary, *Ellwood* was threaten'd, provok'd, and defy'd, inſtead of cajoling her. And what was all this for at laſt, but only to remove a Jealouſy, and moſt ridiculouſly, at the ſame time, to condemn themſelves by a Confeſſion out of their own Mouths, and improve the Suſpicion into a Certainty. Can any Body imagine that they would not have done more to have ſuppreſt *Owen* and *Ellwood*'s Evidence, than *Anne Burton*'s, or *Simon Varelſt*'s, who ſwears farther, that his Wife heard all this Diſcourſe betwixt *Germaine* and himſelf in the next Room, and told of it? Why was ſhe not produced then, or the Perſons to whom ſhe told it? But *Rothmell* ſwears, that Mrs. *Varelſt* ſaid, the Dutcheſs had ill People about her, and was much wrong'd, and that ſhe herſelf could clear her about the Scandal of the Linnen; ſo that 'tis plain, Mrs. *Varelſt* was not an Evidence for the preſent Turn.

† THere is not one Word in *Foſter*'s Evidence, true or falſe, that's worth the hearing, only it is levelled, upon the main, at the Dutcheſs and Mr. *Germaine*, and *John Hall* gives the Reaſon of it; for this ſame *Foſter*, he ſays, was Mr. *Germaine*'s Coachman, who, he ſaid, would turn him off, and he would be reveng'd of him. *Hoſea Grimſley* teſtifies alſo, that ſome three Days before *Foſter* was turn'd away, he ſaid, he thought it no more Sin to kill his Maſter, than to kill a Louſe. So that the Evidence he gives, was grounded on the Malice he bore his Maſter for turning him off.

§ *Lloyd*'s Depoſition is nothing at all to the Purpoſe; or if it were never ſo pertinent, the Falſities in it are ſufficient to ſpoil it: For, in Truth, his Evidence, as to Mr. *Germaine*'s being at *Vaux-Hall*, is only grounded upon Hear-ſay and Report, and yet he ventures to ſwear him to be there every Month in both the laſt Summers; and particularly, that he was ſeveral Times there in *May*, *June*, *July*, and *Auguſt*, 1691. Whereas *Alexander Herman* ſwears, that Mr. *Germaine* went to *Ireland* in the Summer 1690, on the laſt of *May*, or the firſt of *June*, where he ſtay'd about four Months, and that himſelf ſaw and ſerved him there; and ſays farther, that he was at *Bruſſels* in *May* laſt. *Anthony Morée* ſays alſo, being Barber to Mr. *Germaine*, that he went beyond Seas, and the Campaign was almoſt over when he firſt ſhaved him, after he came back from *Flanders*, which is a flat Contradiction to *Lloyd*'s Evidence.

knew him wear his own Hair; his own Hair is dark brown: He never knew him appear abroad without a Wig; his Hair is about half a Finger long; he wore a fair Perriwig: He saith, he, the Witness, was quarter'd in a little Tent behind him in *Ireland*; he could not stir but he heard him: He saith, that four Weeks after he saw him in *Brussels*, he saw him walking in St. *James*'s Park.

Anthony Morée saith, He was Barber to Mr. *Germaine*; the first Time he shaved him was about five or six Years since; his own Hair is brown; he shaved his Head very often; he shaved him before he went to *Holland*, and since he came Home: He never saw his Hair long enough to cover his Ears; nor saw him ever wear his own Hair, but a Perriwig: He shaved him for a Year and half before and since he went for *Ireland*: He shaved him always at his own House near the Park: He or his Man shaved him ever since he came from *Holland* to this Day: He or his Man shaved him the Night before the King went for *Holland*: He saith, that Mr. *Germaine*, when he went away, said it would be a Month or two before he should come back, but he knows not how long it was: This was at his House next Door to the Cock-Pit; he shaved him generally since the King came into *England*: He saith the Campaign was almost done when he first shaved him, after he came from *Flanders*.

The next Witnesses produced by the Duke of Norfolk, *were* Peter Scriber, Andrew Anderson, Robert Hemming, John Reynolds, *and* Margaret Foster *.

Peter Scriber saith, That he lett an House, at *Vaux-Hall*, to Mr. *Daniel Germaine*, *Midsummer* was two Years, *viz.* 1689, at Twenty-four Pounds *per Annum*. He told him, that two Ladies that were to come from *Holland* were to live there; one was Mrs. *Bryan*, the other the Lady *Bateman*; they went by the Name of *Daniel Germaine*'s and Captain *Germaine*'s Sisters. The Ladies came to the House about ten Days after it was lett; one *Goodman*, that attended them, was off and on there all the Time that the Lady *Bateman* lived there, which was off and on till *September* last: This *Goodman* is the same Man that was heard here the other Day, as *Henry Reyner*; he remembers not, nor can be positive, that he hath seen Captain *Germaine* there at any Time; he cannot say he knows him; he hath not seen him seven or eight Years. He saith, he, the Witness, is generally absent in the Day-time; *Goodman*, he saith, came off and on to the Lady *Bateman*'s, from the Time she came thither 'till the Time she went away.

Andrew Anderson saith, He knew one that went by the Name of the Lady *Bateman* a Year and half ago, at *Vaux-Hall*, from last Spring was Twelve-months 'till near last *Michaelmas*, but hath not seen her since; he knew one that went by the Name of *Goodman* that used the House; and that *Goodman* is *Reyner*: He knew a Gentleman that lived by the *Cock-Pit*, that went by the Name of my Lady's Brother, which he used to take into his Boat at *Channel-Row*, and carry to Mr. *Scriber*'s House at *Vaux-Hall*. He carried him several Times backwards and forwards; since *Midsummer* he hath carried him twice; he used to carry him to the back-Stairs of *Scriber*'s House: The same Day he fetch'd him, in the Forenoon, from the Parliament Stairs, or *Channel-Row*, he carried him back in the Afternoon: He had a light Wig. He, the Witness, hath carried Wood from *Scriber*'s House, from the Person that went by the Name of the Lady *Bateman*, to the House by the *Cock-Pit*; one *Nicola* used to receive it into Carts, at the *Wool-Stable*. This *Nicola* was, he supposes, Servant to the Gentleman that lives in that House on the other Side the *Cock-Pit*; he hath been at the Door, but never in the House: He saith he bought the Wood of the Bargemen, by the Person's Order that was call'd the Lady *Bateman*.

Robert Hemming saith, He knew one that lived near the Dye-house at *Vaux-Hall*, that went by the Name of Lady *Bateman*; he saith, he was Gardener to the House near two Years since, after *Midsummer* next will be three Years; he knows not the Lady, otherwise than by the Name of Lady *Bateman*; he hath seen Gentlemen come there, but he knows not their Names; he knew his Servant *Goodman*; Mr. *Knolles*, that waited on the Lady, and was chief Gardener, paid him his Wages; he knew *Goodman* by no other Name.

John Reynolds saith, That he saw the Lady that went by the Name of Madam *Bateman*, several Times walking in her Garden, living conceal'd; that is, she lived privately, and had but little Conversation amongst her Neighbours. The sixth of *November* last, being invited to dine at a Friend's at *Westminster*, he met between the Lord *Peterborough*'s and the Ferry, a Lady whom he believed was the same Lady *Bateman*; and because he would not be under a Mistake, he enquired of one that follow'd her, and he told him, it was the Dutchess of *Norfolk*; his Business is at the next Door to *Scriber*'s House: He hath seen a Gentleman walk with the Lady in the Garden, that his, the Witness's Servants have told him, was Mr. *Germaine*; he hath known the Lady live in that Place above two Years and half. He knew *Goodman*, that lived there, who now goes by the Name of *Reyner*.

Margaret Foster saith, She knows one *Nicola*, he's Mr. *Germaine*'s Gentleman, that lives next House to the *Cock-Pit*. Mr. *Germaine* hath liv'd there two Years; her Husband was his Coachman; it's the *Royal Cock-Pit*, in *Park-Street*, or *Carteret-Street*; Mr. *Germaine* sent for her on *Sunday* Fortnight, to enquire for her Husband, who, he told her, was a Witness against him; and his Brother (who was present) told her, that his Brother did not send for her to bribe her, but to tell her Husband he should not forswear himself, for there was a Pillory.

Jane Wadsworth *examined on the Behalf of the Duke of* Norfolk, *against the Dutchess* §.

Jane Wadsworth saith, That she sold Drink; and going into Mr. *Germaine*'s House, a little before the King went into *Ireland*, for a Pint Pot, she saw a *Dutchwoman*, who bid her go up Stairs for it; and going up for it, she met the Dutchess of *Norfolk* in a Night-Gown, one side lapt over the other side, with *Flanders*-lac'd Night-Cloaths on her Head, without a Hood on: About two Hours after, *Herman*, Footman to *Germaine*, came into her House, and she saying to him, You have got the Dutchess of *Norfolk* at your House: He said, No Dutchess of *Norfolk*: I said it was she, for I had seen her some Hundreds of Times: He said, it was his Master's Lady, and his Master's Dutchess, no Dutchess of *Norfolk*; why should not my Master have a Dutchess as well as the Duke of *Norfolk*? She hath known Mr. *Germaine* three Years next *Midsummer*, having liv'd there so long. *Herman* enquiring where I saw her, I said, upon the Stairs: He told me, I should not have gone up the Stairs: I told him, the *Dutchwoman* bid me go up; it was about Eleven o'Clock in the Day-time that she saw her: He bid me say no more of it; for if his Master knew it, he would kill the *Dutchwoman*. She saw *Welch Frank*, about two Months since, deliver a Letter to Mr. *Germaine*, and she hath seen her go to the House often; she hath known the Dutchess ever since, and before she was married.

Francis Knight (examin'd before for the Dutchess) being called in, the Witness saith, This is the Woman that was call'd *Welch Frank*, whom she hath often seen at Mr. *Germaine*'s; she saw her, about the Time the King came home from *Flanders*, give another Letter to Mr. *Nicola*, Mr. *Germaine*'s Gentleman.

Witnesses produced by the Duke of Norfolk, *to speak to the Credit of* Jane Wadsworth.

John Prince saith, He hath known *Jane Wadsworth* twelve Years, to be a good, honest, poor Woman, and of good Reputation, to the best of his Knowledge; and that she takes Care to maintain her Family; he believes her to be an honest Woman, and that she would not take a false Oath; he knew her at the *Horse-Ferry*, and in *Carteret-Street*.

Emery Arguis saith, That he hath known *Jane Wadsworth* thirteen or fourteen Years; he never knew her but of as good Reputation as any in the Parish: She is poor, but he believes she would not take a false Oath.

Robert Elmes saith, That he hath known *Jane Wadsworth* twelve or thirteen Years; he thinks her a very honest Woman; he never heard but she was an honest poor Woman, that endeavoured to live and maintain her Family; she is of good Reputation.

Charles Read saith, He hath known *Jane Wadsworth* twelve Years, and something better; he never knew her to do an ill Thing, but she was always a careful, industrious Woman; he hath known her married all that Time, and she never was a Servant in that Time.

Henry Dagley, Senior, saith, That he hath known *Jane Wadsworth* sixteen or seventeen Years; she was always a very civil Woman, and he never heard other by her.

Witnesses sworn on the Behalf of the Dutchess of Norfolk, *to the invalidating the Testimony of* Jane Wadsworth.

Grace Cook saith, That she knows *Jane Wadsworth*; she hath lived near her four Years; she came into the Witness's House with a Paper in her Hand, and asked her, Who left it? saying, She knew nothing of it: She said, that she had said, that she had seen the Dutchess of *Norfolk* in Mr. *Germaine*'s House, but she had not seen her a great while, and now that she had seen her, she was satisfied that it was not her; and she wish'd, that she might burn in the Fire, and never go Home to her Children, if she would take her Oath of it. The Paper was to warn her to this House; it was the first Night the Papers came out that she said this; *Hosea Grimsley*, *John Hall*, and *Margaret Condy* were present when she said this: She saith, she lives next Door but one to *Jane Wadsworth*.

John Hall saith, That he hath known *Jane Wadsworth* above a Year: About a Fortnight since, she came into Mrs. *Cook*'s, with an Order in

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* *Observations upon the Depositions of* Peter Scriber, Andrew Anderson, Robert Hemming, John Reynolds, *and* Margaret Foster.

These Testimonies are all foreign to the Charge against the Dutchess; her Grace's being at *Vaux-Hall*, and the going under borrow'd Names, is all acknowledged, and the Reasons already given; besides, the Mistakes in them are so few and trivial, that it is not worth while to detect them.

§ *Observations upon the Evidence of* Jane Wadsworth.

JANE Wadsworth swears, She saw the Dutchess at Mr. *Germaine*'s, and what Discourse she had afterward with *Herman*, Mr. *Germaine*'s Footman, and that a *Dutchwoman* sent her up Stairs for a Pint Pot, by which Accident she saw the Dutchess: She says also, that she saw *Welch Frank* deliver a Letter to Mr. *Germaine*. *Frances Knight* being produced, *Wadsworth* swears that's the Woman that was call'd *Welsh Frank*, and that she saw her give another Letter once to Mr. *Nicola*, Mr. *Germaine*'s Gentleman; there are also four Witnesses produced for her Credit, that say they know no Ill by her.

But then *Grace Cook*, on the other Hand, swears, That *Jane Wadsworth* told her, that she thought she had seen the Dutchess at Mr. *Germaine*'s; but was now satisfied that it was not she, and cursed herself and her Children, if she would take her Oath that it was the Dutchess: This was upon her receiving a Subpœna, to appear and give Evidence. *Hosea Grimsley*, *John Hall*, and *Margaret Condy*, were present at this Discourse.

John Hall swears, That she said that she saw the Dutchess of *Norfolk* at Captain *Germaine*'s, but upon a farther Sight of her, she finds she was mistaken.

Hosea Grimsley swears to the Discourse, the very Words of the Curse, and the Persons that were in Company; all agreeing with the Deposition of *Grace Cook*. *Margaret Condy* swears to the very same Particulars.

Alexander Herman deposes, That he never saw *Wadsworth* in his Master's House, nor ever had any Discourse with her concerning the Dutchess; and he being a Person turn'd away in Disgrace from his Master, would have made no Scruple to publish any Secret of that kind, at least, to swear the Truth, when upon his Oath.

in her Hand, but knew not who left it; and ſaid, She could ſay nothing to it: Mrs. *Cook* ſaying again, You muſt ſay ſomething to it, elſe you had not had this Order from the Houſe; then ſhe ſaid, ſhe had been at the Duke of *Norfolk*'s, and had told the Duke, that ſhe had chanced to go into Captain *Germaine*'s Houſe for a Pint Pot, and ſhe chanced to ſee the Dutcheſs of *Norfolk*; but ſhe ſaid ſhe might be miſtaken, for ſhe had not ſeen her in ſeven Years before, but ſhe had ſeen her once or twice ſince ſhe came out of *France*, and that was none of the Dutcheſs of *Norfolk* which ſhe ſaw on Captain *Germaine*'s Stairs; whereupon *Hoſea Grimſley* aſking her, if ſhe were ſure it was not ſhe? She ſaid, ſhe was ſure it was not; ſhe wiſhing that ſhe might burn, and never go home to her Children, if ſhe would ſwear it, for ſhe could not ſwear it. *Hoſea Grimſley*, *Grace Cook*, and two other Women, were preſent in *Grace Cook*'s Houſe when this Diſcourſe happened, which was the very Night the Order came out. He ſaith, he wrought in Mr. *Germaine*'s Houſe; he ſaw twice or thrice Ladies there in Maſks; one of the Ladies in the Maſk gave Order to take down a Partition: She was reported to be Captain *Germaine*'s Siſter.

Margaret Condy ſaith, She knows *Jane Wadſworth*, who came into Mrs. *Cook*'s the firſt time ſhe was ſubpœna'd, and aſked, who left the Paper in her Hand for her? She ſaid, ſhe went to Mr. *Germaine*'s for a Pot, and ſhe thought ſhe ſaw the Dutcheſs of *Norfolk* there; but ſhe ſaw her ſince her coming from *France*, and was ſatisfied it was not her, and wiſhed ſhe might never ſee her Children, and burn, if ever ſhe ſaw her there.

Alexander Herman ſaith, That he knows *Jane Wadſworth* well; he never had any Diſcourſe with her concerning the Dutcheſs of *Norfolk*'s being in Mr. *Germaine*'s Houſe; he ſaith, he hath drank often at *Wadſworth*'s Houſe, but he never had any Diſcourſe with her concerning the Dutcheſs of *Norfolk*, nor never ſaw this Woman in his Maſter's Houſe in all his Life: He waited on his Maſter at Table, and in his Chamber, all the Time of his Service, which was a Year and a Half; he never ſaw a Lady in a Maſk in his Maſter's Houſe.

Mary Pennington ſaith, That ſhe knows *Jane Wadſworth*; ſhe was her Servant, but not long, for ſhe was not honeſt. She, the Witneſs, being gone out, at her Return, ſhe met her going away with her the Witneſs's Linnen, and her Huſband's, bundled up: This is about 11 Years ſince.

Francis Knight ſaith, That ſhe knows not *Jane Wadſworth*, nor never diſcourſed with her, nor never ſaw her at Mr. *Germaine*'s Houſe, nor did the Witneſs ever carry any Letters thither.

Witneſſes examined on the Behalf of the Duke of Norfolk, *againſt the Credit of* John Hall.

HENRY *Dagley*, junior, ſaith, That he knows *John Hall*; he was a Workman at Mr. *Germaine*'s, when he, the Witneſs, wrought there; and *Hall* hath often ſaid to him, that he believed it was the Dutcheſs of *Norfolk* that was there in the Maſk, and that gave him Directions in his Work there; this was at Mr. *Germaine*'s Houſe in *Park-Street*: He could not affirm it to be true, becauſe ſhe was maſked, but really believed it.

John Hoſkins ſaith, That *John Hall* was employed by Mr. *Germaine*, and a Lady that was maſked; the Lady was the firſt that ever ſhewed him his Work what he was to do, and the firſt Work he did was to take down a Partition; we talking amongſt ourſelves, that it was the Dutcheſs of *Norfolk*. *John Hall* has ſaid, that that Lady was the Dutcheſs of *Norfolk*; not that he could ſay ſo of his own Knowledge, but that he hath been often told it was ſo: He ſaith, that *Hall* told him, the Day he the ſaid *Hall* was examined here, that if he had been aſked more, he could have ſaid more.

Witneſſes ſworn on the Behalf of the Dutcheſs of Norfolk, *intimating a ſeeming Reconciliation* *.

MRS. *Judith Stourton* ſaith, That ſhe was Servant to the Dutcheſs of *Norfolk*, when the Report was of the Dutcheſs and Mr. *Germaine*, which was about a Week before the Duke and Dutcheſs went to *France*: She was aſked by the Lord *Peterborough*, in the Preſence of the Duke of *Norfolk*, in the Duke's Houſe in St. *James's-Square* (where they ſhut the Door), as ſhe would anſwer it to the Face of Almighty God, if ſhe did know whether his Daughter was an Adultereſs: Her Anſwer was, That as ſhe hoped to ſee God in Heaven, the Dutcheſs was as virtuous as any Woman alive, for aught ſhe knew. She ſaith, that what ſhe then ſaid is true; and if ſhe ſhould pretend to ſay more, ſhe ſhould wrong her. She ſaith, That no one was preſent, beſides the Lord *Peterborough* and the Duke, when they examined her; and that ſhe ſaw no Shirt or Waiſtcoat at that Time; and that ſhe doth not remember ſhe ſaid to Mrs. *Webb* any thing concerning the Dutcheſs and Mr. *Germaine*, and thinks ſhe never ſpoke with Mrs. *Webb*; and ſhe was not at *Windſor* when the Duke was at *Portſmouth*: She ſaith, there was a Report of Scandals, which ſhe was ſorry for.

Edith Sawbridge *and* Webb, *produced on the Behalf of the Duke of* Norfolk, *to diſcredit the Teſtimony of Mrs.* Stourton †.

EDITH *Sawbridge* ſaith, That the *Tueſday* following this unhappy Diſcourſe concerning the Dutcheſs of *Norfolk*, Mrs. *Stourton* came into her Chamber, and ſhe telling her what had happened at *Windſor*, Mrs. *Stourton* replied, this is nothing but what ſhe expected before now: The Witneſs replied, That if ſhe, the Witneſs, had been as near the Dutcheſs as the ſaid Mrs. *Stourton*, ſhe would have prevented all this. To which Mrs. *Stourton* anſwered, Would you have had me whipt at the Cart's-Arſe? The Diſcourſe we had was, that Mrs. *Kniſeton* told her, when I came from *London* on *Friday* Night, that ſhe told me ſhe was glad I was come, for ſhe expected her Throat to be cut every Night ſince my Lord Duke went to *Portſmouth*; I aſked her the Reaſon of her Fear; ſhe anſwered, *Germaine* had laid with my Lady Dutcheſs ever ſince my Lord Duke went to *Portſmouth*; that when he came Home he would hear of it, and he would kick her for a Bawd; and if ſhe ſhould tell my Lord, *Germaine* would cut her Throat. I bid her have a Care what ſhe ſaid, for theſe were dangerous Words: How can you prove this? She ſaid, it was very true. The Witneſs aſked her (Mrs. *Kniſeton*) how ſhe knew this? She ſaid, *Germaine*, inſtead of going Home, went into the Cloſet: The Witneſs cannot ſay, that ſhe ſaid all this to Mrs. *Stourton*, but the greateſt Part ſhe did ſay. Mrs. *Stourton* ſaid, this was nothing but what ſhe expected before. This was the *Tueſday* after my Lord Duke came from *Portſmouth*; this was about *Bartholomew-tide*, in the firſt Year of King *James*'s Reign.

Mrs. Stourton *called in, to confront this* Edith Sawbridge, *and examined.*

MRS. *Judith Stourton* further ſaith, That ſhe ſaw Mrs. *Sawbridge* once in the Duke's Houſe in St. *James's-Square*, and they talked of the Slander of *Germaine* and the Dutcheſs of *Norfolk*: She ſaith, ſhe, the Witneſs, never heard Mrs. *Sawbridge* ſay, that Mrs. *Kniſeton* ſhould ſay, that *Germaine* laid with the Dutcheſs every Night at *Windſor*: She denies that ſhe ſaid to Mrs. *Sawbridge*, that ſhe expected to hear that before now; ſhe never ſaid to Mrs. *Sawbridge*, Would you have had me whipt at the Cart's-arſe? She ſaith, ſhe remembers not that Mrs. *Sawbridge* told her, that Mrs. *Kniſeton* ſaid, that ſhe was afraid that her Throat would have been cut when the Duke was at *Portſmouth*: She remembers not that ſhe aſked Mrs. *Sawbridge* the Reaſon of Mrs. *Kniſeton*'s Fear, or that ſhe told her any thing of Mrs. *Kniſeton* ſaying, that Mr. *Germaine* had laid with my Lady every Night at *Windſor*: She ſaw Mrs. *Sawbridge*, and diſcourſed with her; but ſhe cannot ſay what Diſcourſe ſhe had with her.

Mrs. *Elizabeth Camell* ſaith, That ſhe went with the Duke and Dutcheſs of *Norfolk* into *France*; they went together very lovingly, and parted ſo: She thinks the Duke ſtaid with her about a Fortnight; the Duke's Eye was ill, and my Lady went often to him; and when ſhe did ſo, we retired: My Lady dreſt his Eye; they eat and drank together every Day; they did not lodge together that ſhe knows: My Lord told her at parting, at the Grate in the Monaſtery, that he would fetch her away ſuddenly; and they parted kindly: Mrs. *Lawſon* was in the Monaſtery with the Dutcheſs, the Witneſs continued there about ſeventeen Months; my Lord expreſt a great deal of Kindneſs to my Lady in going, and while he was there; there were Tears on both Sides at parting: When my Lord and Lady were together in the Houſe called *L'Hotel de Terrau*, in *Paris*, we uſed to withdraw, not knowing what they had to ſay together.

Mr. *Matthew Scott* ſaith, That he paid ſeveral Sums to the Dutcheſs from the Duke: in *May*, 1688, he paid one Hundred and twenty-five Pounds for the Dutcheſs to Mr. *Cragg*: He paid two or three hundred Pounds into *France*, when the Duke and Dutcheſs were there: He cannot ſay, that he remitted any Money into *France* after the Duke came Home: He knows not that any Money was paid to Mr. *Mourton* for my Lady by the Duke's Order.

Mr.

Mary Pennington ſays, That *Jane Wadſworth* was her Servant a while, but was not honeſt, and that ſhe had filched ſome of her's and her Huſband's Linnen, and was going away with it.

Frances Knight denies the Knowledge of *Wadſworth*, or any Diſcourſe with her: She never ſaw her at Mr. *Germaine*'s, nor ever carried any Letters thither.

But here are two Witneſſes brought in now to arraign the Credit of *John Hall*, which is as much as to ſay, that they had no Exceptions to any of the reſt, or which is all one, to the Truth of the Matter; for *John Hall*'s Evidence is by them confirmed over and over. And what is it that theſe two Witneſſes have to ſay at laſt? *Henry Dagley* ſays, That he believed it was the Dutcheſs he ſaw at Mr. *Germaine*'s, but could not affirm it. And *John Hoſkins* ſays, That they ſaid it was the Dutcheſs, but he could not ſpeak it of his own Knowledge; which amounts to no more than a bare Hear-ſay.

* *Obſervations upon the Depoſitions of Mrs.* Judith Stourton, Edith Sawbridge, Elizabeth Camell, *Mr.* Matthew Scott, *and Mr.* Robert Welborne.

THE Reader will find this Diſcourſe about Mr. *Germaine* and the Dutcheſs, to be a Scandal of a Matter of ſix Years ſtanding; *Hudſon*, a caſt Footman, has ſworn to the Shirt and Waiſtcoat, and that he immediately told my Lord of it. *Anne Burton* ſwears likewiſe (with another falſe Oath between her Teeth), that this Shirt and Waiſtcoat were ſent by the Duke to the Lord *Peterborough*'s. It follows now to be noted, what Courſe has been taken from the firſt to the laſt, for a thorough diſcovering of the Truth of this Matter, and how it comes to paſs, that the Thunderbolt ſhould hang in the Air ſo many Years after the breaking of the Cloud.

Mrs. *Stourton* is here upon her double Oath, firſt under the Shrift of the Duke and my Lord *Peterborough*, who took her privately, and adjured her, as ever ſhe hoped to ſee God in Heaven, to declare what ſhe knew as to the Dutcheſs being an Adultereſs; ſhe purged herſelf upon her Hopes of Salvation, that the Dutcheſs was as virtuous as any Woman alive for aught ſhe knew: She ſwore the ſame thing over again at the Bar of the Houſe of Lords; and being interrogated about the Shirt and Waiſtcoat before ſpoken of, ſhe ſwore likewiſe, that ſhe ſaw no Shirt or Waiſtcoat at that Time.

† *Edith Sawbridge* was now produced againſt the Credit of Mrs. *Judith Stourton*, and lays the Streſs of her Evidence upon what Mrs. *Kniſeton* ſaid, which has been the very Pinch of the Queſtion throughout the whole Cauſe, and the Proſecution has ſtill been at a Fault when it came to any material Point; that is to ſay, only the Hear-ſay Witneſſes are produced, and thoſe that can ſpeak upon Knowledge, and poſitively to the Fact, are withdrawn, or concealed, contrary to the Practice and Reaſon of all judicial Proceedings.

Mrs. *Stourton* is called in again to confront *Edith Sawbridge*, and denies every Article in her Depoſition, one by one, that is of any Moment; but at the ſame time there appears no Exception, on the other Hand, to the Credit of Mrs. *Stourton*: Neither is it to be imagined, that any

Mr. *Robert Welborne* saith, That about the Middle of *November* last, the Duke of *Norfolk* sent for him by Mr. *Scott*, to meet his Grace in his Room, by the Lords House, which accordingly he did: His Grace told him, there had been some Messages and Proposals by Sir *Robert Clayton* and Sir *Robert Howard*; but he looked on them both to be Men of great Business, and could not attend on such Matters, and therefore he sent for him, knowing him to be willing to do any Services between them. The first thing his Grace desired, was to acquaint his Wife, and the Lady *Peterborough*, and he thinks he named the Lord *Peterborough*, that he expected to be indemnified from the Dutchess's Equipage; for, says he, I hear she is setting up for a great Equipage, and I desire to be free from being obliged to pay for any of that: He told his Grace, that he thought he was mis-inform'd, for all the Equipage he saw, was a Coach, Coachman, two Footmen, a Pair of Horses, and two or three more Servants. But, says his Grace, I formerly paid Money for her to one *Mourton*, and should be unwilling to do so again. I presume, my Lord Duke, said he, that was a Debt contracted while your Grace and the Dutchess lived together. But, says his Grace, pray do you acquaint them of it, for this is what I expect.

Next, says his Grace, my Wife has some Pretensions upon *Castle-Rising*, which I could sell without her Consent, by losing Two thousand, or Two thousand five hundred Pounds: And besides, I find she hath also a Pretension upon *Billing*, which I never knew till very lately, when I was upon selling of that Reversion; but I should have been an ill Man to pretend to do that, if I had known of any such Incumbrance; therefore, I would have you tell my Wife, that if she will consent to the Sale of those Estates, and make me easy in that Particular, let her consider wherein I may make her easy, and I shall do it: I know she was a great Lover of *Drayton*, and I suppose is so still; and she did once offer me a considerable Sum of Money for my Life in it: Therefore let her consider of this Matter, and if she can propose any thing for her Ease and Quiet, on these Terms, I shall comply with her.

I do not say it to threaten her: But I am told, that for the Reason of there being either One-and-twenty, or Two-and-twenty *Catholick* Heirs of my Family, before one *Protestant* one, if I would——(*Here his Grace stopt*), says *His Grace*, You understand me: *Making no Answer, his Grace was pleased to say again*, If I would bring in a Bill of Divorce, I should obtain it on that Account. He told His Grace he would be sorry to hear of any such Thing; but in Obedience to his Grace's Commands, he should acquaint the Dutchess with it. Accordingly he did, the same Day, and Lady *Peterborough* both. Her Grace was very angry at the Message, especially at that Part that mentioned a Divorce; and he was sent the next Morning to Mr. *Scott*, to desire him to acquaint the Duke, that as he was my Lord *Peterborough*'s Servant, it was not fit for him to receive nor bring such Messages: But if his Grace had any thing to say, it was most proper by a Servant of his own, or to send for one of her's. I carried the Message the next Morning to Mr. *Scott*, and at my Return Home, the Dutchess shewed me a Letter she had writ to the Duke to the same Purpose, and which was sent to his Grace, but not by him: The Dutchess did declare, when he proposed the Sale of *Castle-Rising* and *Billing*, as the Duke had desired, that she would never consent to it. By any of this Discourse it did not appear to him, that the Duke shewed any Inclinations to live with the Dutchess, nor did he understand it so.

The Evidence being ended,

After a long Debate thereon, the Question was put:

Whether the Bill, Intituled, An Act to dissolve the Marriage of *Henry* Duke of *Norfolk*, Earl Marshal of *England*, with the Lady *Mary Mordant*, and to enable the said Duke to marry again, *shall be read a second Time?*

It was resolved in the Negative.

Matth. Johnson, Cler' Parliamentor'.

Woman should dare to swear false, in a Case where two such Witnesses should be privy to the Perjury.

It follows now to be noted, what Course has been taken for a thorough Discovery of this Intrigue, according to the usual Methods of Honour and Justice. The Examination of Mrs. *Stourton* by the Duke and my Lord *Peterborough*, was as solemn, strict and private as the Case required; and it was while the Clamour was fresh too: So that there was no Time lost when they enter'd upon the Scrutiny. It will be seen in that which follows, by what Degrees the Heat of this Calumny cool'd, and what brought it on again.

The Duke and Dutchess went for *France* together, about a Week after the breaking out of this Clamour, and *Elizabeth Camell* waited upon the Dutchess, who swears, that they went lovingly together, and parted with tears on both sides; my Lord telling her Grace at parting, that he would fetch her away suddenly. They eat and drank together every Day, and were frequently together in private; but she cannot say they lodg'd together. So that thus far, in all outward Appearance, the Misunderstanding seem'd, in some Measure, to be composed.

Mr. *Scott* speaks only to the Matter of Monies and Accompts, which is little or nothing to the Purpose in this Place, except only as to the One Hundred Twenty-and-Five Pounds, mentioned to be paid by him for the Dutchess's Use; which was a Quarterly Payment out of Five Hundred Pounds *per Annum*, adjudged, and ordered by the High-Commission Court to be paid to her, in lieu of Alimony.

But Mr. *Robert Welborne* comes to the very Merits of the Cause, and the present State of the Question. He deposes, That in *November* last the Duke sent for him, and told him (among other Things by the bye), that the Dutchess had some Pretensions upon *Castle-Rising*, and also upon *Billing*; and thereupon order'd the Witness to give her Grace to understand, that if she would consent to the Sale of those Estates, and make the Duke easy in that Particular, let her but consider wherein he himself might make the Dutchess easy too, and upon those Terms he would do it.

His Grace told the Witness farther, That there being One or Two-and-Twenty Catholick Heirs to the Family, before one Protestant Heir, if (says his Grace) I would bring a Bill of Divorce, (I do not say it to threaten her) I could obtain it on that Account. The Witness acquainted both the Dutchess and the Lady *Peterborough*, the very same Day, with the Substance of this Message, her Grace taking it very heinously to be told of a Divorce; and the next Day the Dutchess shewed the Witness a Letter she wrote to the Duke upon this Occasion, declaring, that for *Castle-Rising* and *Billing* she would never part with them.

It appears from hence, That upon the Examination of Mrs. *Stourton*, and other necessary Enquiries into the Grounds of this Scandal, the Violence of the first Impression was so far taken off, that according to the Evidence of *Elizabeth Camell*, my Lord was pleased to treat the Dutchess with all Instances of Tenderness and Respect, both upon their Passage into *France*, and upon the Places there, those of the Bed only excepted. In this State Matters have continued some five or six Years now, without any Speech, or thought of a Divorce, that ever the Dutchess heard of, 'till the Middle of *November* last, in a Message by Mr. *Welborne* from the Duke, and that was but upon a certain Condition neither: however it was improved afterwards into a Bill, that upon the seventh of *January* following was formally brought into the Lords House.

The Reader will need no other Light to a true Understanding of the Strait her Grace was in upon this Surprize, and the Disadvantages she was exposed to, than what he has here before him, in the Order of the Journal itself: Where he will find the Dutchess so scanted for Time to produce Witnesses, and prepare her Defence, that it was a wonderful Providence she should do so much as she did; though in the mean while, her Grace has lost the Benefit of several considerable Witnesses, for want of Time to find them out, and bring them together. Now as for Mr. *Welborne*'s Deposition, it carries the Countenance rather of a Treaty than an Accusation; the Duke's Part is only a calm, deliberate Discourse, consulting the reciprocal Ease both of himself and of the Dutchess. Terms are proposed and promised, and not one Word or Glance of Reproach from one End to the other of it. Mr. *Welborne*, (upon the Duke's asking him, at the Lords Bar, if by his Discourse he understood an Inclination to live with the Dutchess) 'tis true, did not gather from his Words, as if he had any Thought of living with her; the only hard Thing said, was that about his Catholick Heirs, which seem'd to turn the Case of Adultery into a Case of Religion. Let any Creature judge now, whether the Dutchess durst to have stood it out thus, if she had been guilty of so foul a Crime, when she might have been safe and free, as appears by the Proposal, upon Terms so much more easy.

To make a short Summary now of the Whole, a Word first to the Character and Quality of the Witnesses.

There is *Owen*, a Street-Porter, brought in as a Witness to the Privacies of the Dutchess's Bed-Chamber, besides several unanswerable Exceptions to the Particulars of his Evidence. There is *Ellwood*, a Cobler's Wife, and a jilting little Slut, that's as palpably detected of Falsity as the other. *Hudson*, a poor tricking Footman, that was turn'd off for his ill Behaviour. *Burton*, a beggarly Wench, that cheated her Landlady, and forswore herself in this Cause at the Lords Bar. *Varelst*, a Painter, and by Intervals a Madman. *Foster*, a Coachman that was turn'd off by his Master, and swore to be revenged of him. *Lloyd*, under several manifest Mistakes, but nothing to the main Cause. *Scriber*, *Anderson*, *Hemming*, *Reynolds*, and *Margaret Foster*, say not one Word to the Purpose. *Wadsworth*, a pilfering Servant, that robb'd her Mistress, and her Evidence most notoriously expos'd.

Now, as these Witnesses are of very little Value upon the Stock of their own Credit, so the Witnesses against them cannot be deny'd to have a fair Reputation, on the other hand. And it is very extraordinary, that after the naming of so many Persons in their Depositions, that said, or did, or heard, or saw this; that the Prosecutors have not brought in so much as one Creature to second the swearing Evidence; though it is sufficiently known, they could have found them, if they would have ventured the Cause upon that Stress. It is to be consider'd once more, what a Difference there has been betwixt the Demeanour of the one Side and the other, towards the Evidence. What Promises, Flatteries, and engaging Obligations on the one Hand, and not so much as one Word or Deed, directly or indirectly, that look'd like a Practice or a Prepossession on the other Part of the Dutchess.

Let this be taken in the softest Sense; for it is a great Misfortune, when officious Instruments, that are forewarn'd to broach Scandals, meet with easy and good-natur'd Dispositions, that are too open perhaps to receive them. This may serve in some Measure, perhaps, to remove the Evidence of those that are not wilfully deaf and blind; and for the rest, it is left to Time and Providence to bring the Truth to light in its due Season, and to vindicate the Cause of the Innocent and Oppressed.

XLIV. *The Trial between* HENRY *Duke of* Norfolk, *Plaintiff, and* JOHN GERMAINE, *Defendant, in an Action of Treſpaſs on the Caſe, at the Court of* King's Bench, *at* Weſtminſter, November 24, 1692. 4 W. & M. *

THE Declaration was in *Trinity* Term, the Fourth of *William* and *Mary*, King and Queen. To which the Defendant pleaded Not Guilty within ſix Years. And it is replied, That it is within ſix Years; whereupon Iſſue was joined, and a Jury of Twenty-Four Knights and Eſquires being returned, Twelve did appear at the Bar, and were ſworn, *viz.*

Sir *Michael Heneage*, of St. *Andrew's*, *Holborn*.
Sir *Thomas Grantham*, of *Sunbury*.
Sir *Charles Humfrevill*, of *Weſtminſter*.
Sir *William Hill*, of *Teddington*.
Ralph Hawtry, of *Ryſlip*, Eſquire.
Robert Sheffield, of *Kenſington*, Eſquire.
John Pagett, of *Drayton*, Eſquire.
Hugh Squire, of *Weſtminſter*, Eſquire.
John Coggs, of St. *Clement Danes*, Goldſmith.
Charles Pryor, of *Highgate*, Eſquire.
Richard Craddock, of *Hornſey*, Eſquire: And
William Withers, of *Cripplegate*, Eſquire.

After the Jury were ſworn, the Counſel for his Grace the Duke open'd the Cauſe.

Mr. *Baniſter*. May it pleaſe your Lorſhip, and you Gentlemen of the Jury, this is an Action brought by *Henry* Duke of *Norfolk*, againſt one *John Germaine*. The Plaintiff ſets forth, That the Firſt of *April*, in the Second Year of the Reign of the late King *James*, the Defendant did, by unlawful Ways and Means, entice away his Dutcheſs, by which Means he had not the Benefit of her Society; and, by laſcivious Converſation, committed Adultery with her, and cauſed her to commit Adultery: And this he layeth to his Damage 100,000 *l.*

If we prove, that he did do ſo, we hope you will give us good Damages and Coſts.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is a very melancholy Thing to be told; yet it is fit the Age we live in may know it, ſo as the Offender may be puniſh'd. The Duke of *Norfolk* is the firſt Duke in *England*; inſtall'd Knight of the moſt Noble Order of the Garter; Lord High Marſhal of *England*, and one of the Lords of their Majeſties moſt honourable Privy Council: And he to be thus abuſed, perhaps none found any ſuch Cauſe to come before any Court. It is a hard Thing, as this Caſe is, for us to produce ſtrong and pregnant Evidence: But our Proofs are ſuch, as I am aſhamed to repeat them; but deſire the Witneſſes may tell your Lordſhip, and the Gentlemen of the Jury, what they know. It was not kept ſecret, but it was known ſo publickly, as all the Kingdom did ring of it; and how the Defendant had the Dutcheſs frequently to his Houſe; and how they lived in Adultery: My Lord, we will take that Method that is moſt plain; therefore it will be neceſſary to give your Lordſhip an Account of ſomething of the Beginning of this Matter.

L. C. J. As to the Time.

Serj. *Tremaine*. They would make this a Sort of a running Account.

Sir *W. Williams*. It muſt be within ſix Years; before the 26th of *May* laſt, if they will prove any Adultery; before, it is nothing.

L. C. J. If the Witneſſes be not heard, it is impoſſible to tell whether it be within the Statute of Limitation.

Mr. Juſt. *Eyres*. If we hear it, and find it out of Time; then when we have heard it, we can tell the Jury how it is, whether it be within the Time; and they are to take Notice, if they open Evidence that goeth beyond ſix Years, I hope your Lordſhip will not ſuffer them to do that.

Mr. Serj. *Thompſon*. Here are Anticipations, Directions, and what not.

Att. Gen. We will call our Witneſſes, if your Lordſhip pleaſe.

Court. *Rowland Owen*, Do you know the Dutcheſs of *Norfolk?*

Rowland Owen. Yes.

Att. Gen. Do you know *John Germaine?*

Rowland Owen. Yes, very well.

Att. Gen. Pray tell my Lord and the Gentlemen of the Jury what you know of him.

Rowland Owen. I have ſeen him ſeveral Times dine and ſup at my Lord Duke's Houſe.

Att. Gen. Tell what Familiarities you have ſeen paſs bet ween the Dutcheſs and *Germaine*.

Rowl. Owen. I was order'd by one *Henry Reyner*, to go down to *Whitehall* with Plates and a Table-cloth, and he would go to the *Blue-Poſts* for ſome Things, and there was a Supper to be that Night; then to go down to *Whitehall:* When I came there, at my Lord Duke's Apartment, I open'd the Door, and afterwards going into a Room, I ſaw Mr. *Germaine* and the Dutcheſs in Bed together; and the Dutcheſs puſh'd me out, and aſk'd me how I durſt be ſo impudent as to come in, and chid me.

L. C. J. Who chid you?

Att. Gen. He ſaith, my Lord, the Dutcheſs of *Norfolk*.

Mr. Serj. *Tremaine*. Pray when was this?

Rowl. Owen. About ſeven Years ſince.

Mr. Serj. *Tremaine*. *Owen*, you ſpeak of ſomething of a Supper, and that you went down to *Whitehall*; Who gave you the Key?

Rowl. Owen. One *Henry Reyner*.

Sir *Tho. Powis*. What, are you a Street-Porter?

Rowl. Owen. I was Uſher of the Hall.

Att. Gen. You were Servant to the Duke, Were you not?

Rowl. Owen. Yes.

Sir *Tho. Powis*. Were they at Supper that Night?

Rowl. Owen. I cannot tell.

Sir *Tho. Powis*. You carried down Plates?---*Rowl. Owen*. Yes.

Sir *Tho Powis*. This you ſay was ſeven Years ago; Who did you tell it to?---*Rowl. Owen*. To the Houſe-keeper.

Sir *Tho. Powis*. Who was ſhe?---*Rowl. Owen*. One Mrs. *Webb*.

Sir *Tho. Powis*. Did you tell no body elſe?

Rowl. Owen. No, indeed, I will not lye.

Att. Gen. We will call another Witneſs.

Margaret Ellwood, Do you know the Dutcheſs of *Norfolk?*

Margaret Ellwood. Yes, my Lord.

Att. Gen. Do you know *John Germaine?*

Marg. Ellwood. Yes, my Lord, about ſeven Years ſince; but I do not know whether I know him now.

Att. Gen. Pray tell my Lord and the Jury what you know.

Marg. Ellwood. It was my Buſineſs, being Houſe-keeper, to look after my proper Affairs, and I being call'd down, I ſaw my Lady and *Germaine*; and ſaw my Lady in an ill Poſture upon the Stools, and my Lady ſaid to *Germaine*, *Kick her*.

Mr. Serj. *Thompſon*. Tell how you ſaw her.

Marg. Ellwood. Why, when I ſaw her, I ſaw her bare Knee, and *Germaine* was near to her; and then I came away, ſhe being angry, and ſo he came from her.

Court. Was his Breeches down?

Marg. Ellwood. His Breeches was down, and his Hat and Sword lay upon the Table.

Att. Gen. What Poſture was the Dutcheſs in?

Marg. Ellwood. I ſaw her bare Knee, and he----

Att. Gen. Was ſhe lying down?

Marg. Ellwood. Yes; and the *Saturday* after I did ſee Mr. *Germaine* come in, and he laid his Hat on the Table, and unbutton'd himſelf, and went to Bed to her.

L. C. J. How do you know that?

Marg. Ellwood. I open'd the Drawing-Room Door, and look'd through the Key-hole of the other Door where they was, and ſaw them go to Bed.

L. C. J. How do you know he was in Bed with her?

Marg. Ellwood. Why I ſaw them, for there was a Wax Candle in the Chamber, and I could ſee them eaſily.

L. C. J. What Time was this you ſay you ſaw them in Bed? Had they no Curtains?

Marg. Ellwood. Yes, my Lord, they had; tho' they were drawn on both Sides the Bed, they left them open at the Foot.

Court. Did you ever pretend this before?

Marg. Ellwood. Yes, I did.

Court. Did you ever ſwear this before?

Marg. Ellwood. Yes, my Lord, in the Parliament I did.

Sir *Tho. Powis*. You have liv'd in ſeveral Places ſince; did you never tell any body's Servant?

Marg. Ellwood. To nobody but Mrs. *Webb:* And my Lady gave Orders next Morning, that I ſhould be put away; but I heard no more of it; but I ſtaid.

Att. Gen. Do you know any thing elſe?

Marg. Ellwood. I was making my Lady's Bed, with one *Anne Burton*, and I found Mr. *Germaine*'s Handkerchief and Ruffles in the Bed, at one Time.

Att. Gen. Do you remember any Shirt and Waiſtcoat that was found?

Marg. Ellwood. Yes.

L. C. J. Did you find his Handkerchief and Ruffles in my Lady's Bed?

Marg. Ellwood. Yes.

L. C. J. Did you never ſee him come down Stairs?

Marg. Ellwood. No, my Lord.

L. C. J. It is very much you never ſaw him come down Stairs.

Marg. Ellwood. We ſet Traps for him to fall over; but he never came down to fall over them.

Serj. *Tremaine*. Do you know of any thing, but in the firſt Year of King *James?*---*Marg. Ellwood*. No, my Lord, not I.

Att. Gen. We will call another Witneſs, Mrs. *Benſkin*. I think, Mrs. *Benſkin*, you are married?---Mrs. *Benſkin*. Yes.

Att. Gen. What is your Chriſtian Name?---Mrs. *Benſkin*. *Anne*.

Att. Gen. Pray tell my Lord and the Jury what you know.

Mrs. *Benſ.* My Lord, I was Houſe-maid and Servant to the Dutcheſs, in the firſt Year of King *James*'s Reign: About *Bartholomew-tide*, my Lady Dutcheſs went to *London* with *Germaine*. *Nell Gwin*, and ſome others, and we did not expect them to come home that Night, but ſhe did, and after they went to Supper; after that they went to Cards; and then my Lady Dutcheſs had a great Mind to go to Bed, and bid us to make her a Fire, and ſo we did; and my Lady went to Bed, and ſaid, Tho' the King and Queen ſhould ſend for me, I would not riſe 'till Eleven o'Clock To-morrow Morning. So the Candles were put out, and two Footmen ſtood to wait, becauſe Mr. *Germaine* uſed to be generous to the Servants; and they waited 'till Two o'Clock in the Morning. I aſk'd them whether Mr. *Germaine* had come down? and they ſaid, No; for they had been there all the while; and if he came, he could not go, for they ſaid, We have laid Chairs and Stools in the Way, that if he come, he might fall over them; and the next Morning I ſaw a Man with a Paper-Box in his Hand, and he aſk'd me for Mr. *Germaine*'s Chamber, or Lodgings; I told him, I knew none he had there. My Lord, the next Day, my Lady Dutcheſs ordered me to make her a Fire, and Mrs. *Knifeton* was combing her Head, and *Nell Gwin* came in, and ſaid, Good Morrow to your Grace; how did you reſt laſt Night? She ſaid, very well. Then Col. *Cornwal* came in, and ſaid to my Lady Dutcheſs, How doth Mr. *Germaine* do? And ſhe ſaid, Why do you aſk me? And Col. *Cornwal* ſaid, He did not lie at Home laſt Night. Then *Nell Gwin* ſaid, We ſhall ſee him come out by-and-bye like a drownded Mouſe. And ſo I

* This Trial, in Order of Time, ſhould not follow the foregoing; but as it relates to the ſame Buſineſs, it was thought proper to inſert it here.

went

went to make my Lady Dutcheſs's Bed, and found a Handkerchief and Ruffles. And Mrs. *Kniſeton* came and ſaid, Come hither, and I will ſhew you a Sight: and when I came, there lay a Shirt and Waiſtcoat, and I took them away, becauſe it was a Place where any Body, as they came, might ſee them. And my Lord Duke was not in Town.

Att. Gen. How came you to take Notice of the Ruffles and Handerchief?

Anne Benſ. Why, Mrs. *Kniſeton* ſaid it was a Man's Ruffles.

Sir *Tho. Powis.* How long was this ſince? In Eighty-five? Had there not been an Appeal?---*Anne Benſ.* Yes, there was.

Serj. *Birch.* Was there any Thing remarkable in the Bed?

Anne Benſ. The Bed was ſtained.

Sir *Tho Powis.* What is your Name now, *Benſkin?---Anne Benſ.* Yes.

Sir *Tho Powis.* What was your other Name?---*Anne Benſ. Burton.*

Sir *Tho. Powis.* Was you ever married?

Anne Benſ. Sir, you know I could have no other Name if I were not married.

Sir *Tho. Powis.* You have lived in ſeveral Places.

Anne Benſ. I have lived with my Lord of *Clare*, and my Lord *Ferrers.*

Serj. *Birch.* Did *Germaine* go by any other Name than he goeth by now?---*Anne Benſ.* Not as I know of.

Att. Gen. My Lord, we will call another Witneſs. *Thomas Hudſon*, Do you know the Dutcheſs of *Norfolk* and Mr. *Germaine?*

Tho. Hudſon. Yes.

Att. Gen. Pray what did you obſerve betwixt the Dutcheſs of *Norfolk* and *Germaine?*

Tho. Hudſon. Sir I was a Servant to Mr. *Scroggs*, that was the Dutcheſs's Steward, and ſo he going away upon other Buſineſs, I was left Butler at *Windſor*, and there came two Captains to play at Cards; one Captain aſked if Mr. *Germaine* was there? I told him, No. Now his Man, as I heard after, had brought *Germaine* a Shirt and Waiſtcoat; for, as ſoon as his Man was gone, we found the Waiſtcoat and foul Shirt: And the ſame Day the Dutcheſs treated the Queen at *Windſor.*

L. C. J. When was this?---*Tho. Hudſon.* It was in the Year 1685.

Sir *Tho. Powis.* Was this in the Year 1685?

Tho. Hudſon. Yes, it was ſo, for I took it down in my Book.

Mr. *Jones.* Did you ſwear all this before the Houſe of Lords?

Tho. Hudſon. Yes; but only the Day of the Month I could not well remember then: but I refreſhed my Memory ſince.

Serj. *Thomp.* We will call Mrs. *Haſtings* and *Elizabeth Knave.* Mrs. *Frances Haſtings*, Do you know the Dutcheſs of *Norfolk*, or Mr. *Germaine?*

Mrs. *Haſtings.* I knew nothing of them, but that they lay at my Houſe.

Att. Gen. Did you know Mr. *Germaine?*

Mrs. *Haſtings.* I ſaw him but once.

Att. Gen. Did you ever ſee Mr. *Germaine* lie at your Houſe?

Mrs. *Haſtings.* Yes.

Att. Gen. When?

Mrs. *Haſtings.* The firſt Year of King *James*'s Reign.

Att Gen. How long?---Mrs. *Haſtings.* A whole Summer.

Att. Gen. We will call another Witneſs. *Elizabeth Knave*, Did you ever live with Mrs. *Haſtings?---Elizabeth Knave.* Yes.

Att. Gen. How long? *Eliz. Knave.* A whole Summer.

Att. Gen. Did you ever ſee the Dutcheſs of *Norfolk?*

Eliz. Knave. Never.

Att. Gen. Did you ever ſee the Dutcheſs of *Norfolk* and Mr. *Germaine* together?

Eliz. Knave. No, but Mr. *Germaine*'s Servant ſaid it was the Dutcheſs of *Nerfolk* that was with Mr. *Germaine*; and as he and I were making the Bed, I found a Handkerchief, marked with an *M*, and a Coronet.

Att. Gen. In whoſe Bed was this?

Eliz. Knave. Why, it was in Mr. *Germaine*'s Bed.

L. C. J. How long ſince?

Eliz. Knave. In the firſt Year of King *James*'s Reign.

L. C. J. Woman, did you find the Handkerchief?

Eliz. Knave. Yes, my Lord.

L. C. J. What Mark had it?---*Eliz. Knave.* An *M* and Coronet.

Serj. *Thompſon.* You ſee how far we are gone.

L. C. J. All without the Statute.

Serj. *Thompſon.* We ſhall ſhew your Lordſhip, and the Gentlemen of the Jury, that my Lady Dutcheſs went by the name of my Lady *Bateman*, and Mr. *Germaine* went by the Name of her Brother; and that he did take a Houſe at *Vaux-hall*, over the Water; the Man's Name was *Scriber*; and ſhe lived in that Place for three Quarters of a Year and more; and then Mr. *Germaine* came conſtantly to her; and it was known to be the Dutcheſs of *Norfolk*, though ſhe went by another Name, and her Servant, *Henry Reyner*, alſo: This *Reyner* was he, that the firſt Witneſs ſwore gave him a Key to her Chamber at *Whitehall.*

[Henry Reyner *did not appear.*]

Att. Gen. Peter Scriber, Pray do you know one Mr. *Germaine?*

Peter Scriber. Yes, Sir.

Att. Gen. Pray, did he come to take any Houſe of you?

Peter Scriber. Yes, Sir.

Att. Gen. How long ſince?---*Peter Scriber.* About two Years ſince.

Att. Gen. Who did he take it for?

Peter Scriber. He told me for a Couple of Ladies that came from *Holland*, as he told me.

Att. Gen. By what Name went they?

Peter Scriber. One by the Name of Mrs. *Bryan*, another's Name was Madam *Bateman.*

Att. Gen. Did you know any Gentleman, called Mr. *Germaine*, that lived near the *Cock-Pit?*

Peter Scriber. Indeed, Sir, I know not where he lived: I have ſeen one walk in the Garden, that went by the Name of the Lady *Bateman*'s Brother.

L. C. J. Where is your Houſe?---*Peter Scriber.* At *Vaux-hall.*

L. C. J. Who paid you the Rent?

Peter Scriber. One Half-Year, my Lord, was paid by my Lady *Bateman.*

L. C. J. What Servants had ſhe?

Peter Scriber. She had one that went by the Name of *Goodman.*

Att. Gen. We will call another Witneſs. *Thomas Lloyd*, Do you know the Lady *Bateman* and Mr. *Germaine?---Tho. Lloyd.* Yes, Sir.

Att. Gen. How often have you ſeen Mr. *John Germaine* at *Vaux-hall?*

Tho. Lloyd. Often.

Att. Gen. Who was this Lady *Bateman?*

Tho. Lloyd. The Dutcheſs of *Norfolk.*

Att. Gen. How do you know that?

Tho. Lloyd. Becauſe I have ſeen her coming out of the Houſe of Lords; and they ſaid it was the Dutcheſs of *Norfolk.*

Att. Gen. Are you ſure of that?---*Tho. Lloyd.* Yes, Sir.

Att. Gen. Did you know one *Goodman?---Tho. Lloyd.* Yes, Sir.

Att. Gen. What is he?

Tho. Lloyd. I know not, but I heard after, his Name was *Reyner*; but when he waited on the Lady *Bateman*, he went by the Name of *Goodman:* Before *Michaelmas* laſt was Twelve-month, I ſaw Mr. *Germaine* that Summer walking with the Lady *Bateman.*

Sir. *W. Williams.* You ſay you ſaw Mr. *Germaine* walking that Summer with the Lady *Bateman:* What Summer was that?

Tho. Lloyd. Yes, that Summer was Twelve-month.

Sir *W. Williams.* Are you ſure it was within two or three Years?

Tho. Lloyd. Yes, that I am ſure it was.

Sir *W. Williams.* Was it the Beginning or Ending of the Summer?

Tho. Lloyd. It was about the Heighth of Summer.

Att. Gen. We will call other Witneſſes; one *Robert Hemingway:* Where do you live?---*Rob. Hemingway.* At *Vaux-hall.*

Att. Gen. Dou you know one that went by the Name of the Lady *Bateman?---Rob. Hemingway.* Yes.

Att. Gen. And you are ſure that ſhe went by the Name of the Lady *Bateman:* Is ſhe Dutcheſs of *Norfolk?---Rob. Hemingway.* Yes.

Att. Gen. Do you know one *Goodman*, that waited upon the Lady *Bateman?*

Rob. Hemingway. Yes.

Att. Gen. Was that his right Name?

Rob. Hemingway. No, his Name was *Reyner.*

L. C. J. Where did you ſee her?

Rob. Hemingway. Near her Father's Houſe, my Lord *Peterborough*'s.

L. C. J. Why, How did you know this was the Dutcheſs of *Norfolk?*

Rob. Hemingway. Why all that ever I knew ſaid ſhe was ſo.

Att. Gen. Where did you ſee the Dutcheſs of *Norfolk?*

Rob. Hemingway. I have ſeen her in the Houſe, and out of the Houſe of the Lord *Peterborough.*

L. C. J. What Occaſion had you to obſerve her?

Rob. Hemingway. I have ſeen her at her Father's Houſe by the *Mill-Bank.*

Att. Gen. He was a Gardener employed there. We will call another Witneſs. *Andrew Anderſon*, Do you know the Dutcheſs of *Norfolk?*

And. Anderſon. Never otherwiſe, but by the name of the Lady *Bateman.*

Att. Gen. Do you know a Lady that went by the Name of the Lady *Bateman?*

And. Anderſon. Yes.

Att. Gen. Do you know one Mr. *Germaine?*

And. Anderſon. I never knew his Name; but he went by the Name of my Lady's Brother: I have carried him oft-times by Water to *Vaux-hall.*

Att. Gen. Have you carried that Gentleman that lived next Door to the *Cock-Pit* by Water to *Vaux-hall?*

And. Anderſon. Yes.

Att. Gen. By what Name did he go by?

And. Anderſon. By the Name of my Lady's Brother.

Att. Gen. What is his Name? or what Name doth he go by now?

And. Anderſon. You know very well.

Att. Gen. Have you carried any Wood from *Vaux-hall* to the *Cock-Pit?*

And. Anderſon. Yes.

Att. Gen. From whence?---*And. Anderſon.* From my Lady *Bateman.*

L. C. J. When you did carry him by Water, where did you take him up?

And. Anderſon. Sometimes, my Lord, at *Channel-Row*, ſometimes at one Place, and ſometimes at another.

Att. Gen. My Lord, he ſaith, he carried from *Vaux-Hall* ſome Wood, and it came over, and it was carried to the *Cock-Pit.*

L. C. J. When you ſaw him then, by what Name did he go by?

And. Anderſon. I never knew him then but by the Name of my Lady's Brother.

L. C. J. What Name goeth he now by?

And. Anderſon. Germaine: All that know his Name know it to be *Germaine.*

Att. Gen. Did you know one that went by the Name of *Goodman*, that lived at *Vaux-Hall* with this Lady *Bateman?*

And. Anderſon. I knew not but that was his right Name then; but now I hear his right Name is *Reyner.*

L. C. J. When you did carry him by Water, where did you carry him?

And. Anderſon. My Lord, ſometimes to one Place, and ſometimes to another, as I am commanded: I muſt obſerve.

Att. Gen. My Lord, we will prove that the Dutcheſs hath been ſeveral times with *Germaine* at the *Cock-Pit*, and that *Germaine* hath gotten a private Door into the *Cock-Pit* Yard, and ſo into the *Park*, for which he pays forty ſhillings *per Annum.*

Att. Gen. Mr. *Bradbury*, Where do you live?

Hen. Bradbury. I live next Door to Mr. *Germaine*'s.

Att. Gen. Where is that?

Hen. Bradbury. By the Park-Wall, next Door to the *Cock-Pit.*

Att. Gen. Tell my Lord, and the Gentlemen of the Jury, how it was he had a Door.

Hen. Bradbury. Why, Mr. *Germaine* had no Way where he could go into the Park, ſo he ſpake to my Man, that he might have a Privilege to go through my Door into the Park; ſo I ordered my Man to give him, or his Servants, Paſſage. About a Year after, he ſent a Workman to me, that he might make a Door out into the Park, and I did agree with him for a Buck, or forty Shillings in Money, which he pleaſed; and ſo a Door was made; but ſince he hath gotten a Door himſelf into the Park.

Att. Gen.

Att. Gen. John Dagley, Pray give an Account of what you know of the Dutcheſs of *Norfolk*, and Mr. *Germaine?*

John Dagley. I was at work there, and I ſaw a Gentlewoman going to and fro, up and down Stairs, and I aſked, Who that was? And I was told it was the Dutcheſs of *Norfolk.*—There was a brave curious Bed, and I was ſaying to ſome of the Houſe, that it was a very fine Bed; and aſking what it might be worth, they ſaid it coſt Seven Hundred Pounds: And I was then juſt married; ſaid I (I have a mind to bring my Wife hither, and give her a Flurt upon it); and we laid all our heads together as if we were ſettling the Nation; and then they ſaid, that Bed was for the Dutcheſs of *Norfolk*; and I ſaw a Perſon there, who they ſaid was the Dutcheſs of *Norfolk.*

Serj. *Birch. Richard Owen*, do you know Mr. *Germaine* at the *Cock-pit?*

Rich. Owen. Yes.

Att. Gen. What Company have you ſeen with him?

Rich. Owen. Why, I ſaw a Lady in a Maſk I may ſay a hundred times.

Att. Gen. How often?———*Rich. Owen.* I may ſay a hundred times in a Maſk, looking about: Another time, I ſaw my Lord Duke of *Norfolk* walking among the Trees in the Park, and this Lady looking out of the Window towards him, in Mr. *Germaine*'s Houſe: This I have ſeen; I ſpeak what I know.

Att. Gen. Jane Wadſworth, come, tell my Lord and the Jury what you know; ſpeak out: Do you know Mr. *Germaine?*----*Wadſworth.* Yes.

Att. Gen. Where liveth he?

Wadſworth. In *Park-Street*, near the *Royal Cock-Pit.*

Att. Gen. Have you ever ſeen the Dutcheſs of *Norfolk* at *Germaine*'s Houſe?----*Wadſworth.* Yes.

Att. Gen. Upon what Occaſion?

Wadſworth. I living next Door, going in for a Pint Pot, with the *Dutchwoman* that belonged to the Houſe, and aſking her for it, ſhe ſaid, There's never a Pint Pot here; it was above Stairs, and bid me go up and fetch it, and ſo I did; and I met the Dutcheſs of *Norfolk* there, ſhe had a Night-Gown on, and Flanders-Lace, but in Night-Linnen.

Att. Gen. Was ſhe undreſſed?---*Wadſworth.* Undreſſed, as one may think; ſhe might have a Petticoat on.

L. C. J. What Occaſion had you to go there?

Wadſworth. For a Pint Pot, my Lord, and going up, I ſaw the Dutcheſs of *Norfolk* going from one Room to another: And, my Lord, another time, I ſaw the Dutcheſs of *Norfolk* and Mr. *Germaine* in a Coach together.

Att. Gen. When was that?

Wadſworth. It was in *March* laſt; and when I ſaw the Coachman, I aſked him who it was that he ſat down out of the Coach; and he ſaid, an honeſt Gentleman, that gave him Two Shillings for the carrying him from the *Horſe-Ferry.*

Att. Gen. Have you ever ſeen Mr. *Germaine* at the Dutcheſs's Houſe?

Wadſworth. I did diſguiſe myſelf, and followed him to ſee where he would go; and I did ſee him go into the Dutcheſs's Houſe at *Mill-bank.*

Att. Gen. When was this?----*Wadſworth.* In *May* laſt.

L. C. J. What Time of the Day?

Wadſworth. My Lord, at nine of the Clock at Night.

Sir *Tho. Powis.* When you ſay you went for the Pint Pot, did you ever ſay any Thing to any Body of it, that you had ſeen the Dutcheſs of *Norfolk?*---*Wadſworth.* Yes, to one *Harman*, that I had ſeen the Dutcheſs of *Norfolk.* How, ſaid he, if my Maſter had ſeen you to go up Stairs, he would have killed the *Dutchwoman.*

L. C. J. Do you know my Lady Dutcheſs well?

Wadſworth. Yes, my Lord, I know her well; ſhe had *Flanders* Horſes ſtood in my Stable, when I kept the *Bear-Inn*, and ſhe came often to ſee them; I know her very well.

Serj. *Birch. Anne Read*, do you know Mr. *Germaine*'s Houſe?

Anne Read. Yes.

Serj. *Birch.* Where is it?---*Anne Read.* By the *Cock-Pit.*

Serj. *Birch.* Do you know him?---*Anne Read.* Yes.

Serj. *Birch.* What Company have you ſeen go there?

Anne Read. In *April* laſt I ſaw a Chair go by, and ſome Perſons ſaid, That was the Dutcheſs of *Norfolk*, and ſo I went and ſaw her in the Chair twice.

Serj. *Birch.* Did you ſee her with her Maſk off?

Anne Read. I ſaw her with her Maſk off, and ſaw her ſet down at Mr. *Germaine's* Houſe, and go in a-Doors, the Door being immediately opened for her.

L. C. J. Did you know the Dutcheſs before?

Anne Read. Yes, my Lord.

L. C. J. Did you ſee her before this Time?---*Anne Read.* Yes, my Lord.

L. C. J. What time of the Day was this?

Anne Read. Between Two and Three of the Clock.

Att. Gen. You ſay you ſaw her with her Maſk off, and ſet down at *Germaine*'s Houſe, and the Door was immediately opened?

Anne Read. Yes, my Lord.

Att. Gen. Now we will call another Witneſs, one *Thomas Foſter.* Do you know the Dutcheſs of *Norfolk?*---*Thomas Foſter.* Yes.

Att. Gen. How did you come to know her?

Tho. Foſter. I drove her often in a Coach with Mr. *Germaine.*

Att. Gen. How long ſince?---*Tho. Foſter.* About this Time four Years.

Att. Gen. Where did you uſe to carry them?

Tho. Foſter. Sometimes into *Lombard-Street*, ſometimes to one Place, and ſometimes to another; and I looked back, and ſaw them with their Heads laid together.

Att. Gen. Are you ſure it was the Dutcheſs of *Norfolk?*

Tho. Foſter. Yes, Sir, I knew her before ſhe was married, and I knew her after.

Sir *Thomas Powis.* Did you ſee them with their Heads together?

Tho. Foſter. Yes.

Sir *Tho. Powis.* When you was on the Coach-Box, you ſay you ſaw them?---*Tho. Foſter.* Yes.

L. C. J. Did you look back to ſee them?

Tho. Foſter. Yes, my Lord, and their Heads were laid together.

Serj. *Tremaine.* Where do you live now?

Tho. Foſter. With the Duke of *Norfolk.*

Att. Gen. We will call another Witneſs. Mr. *Bowtel*, Pray do you know Mr. *Germaine?*---Mr. *Bowtel.* Yes.

Att. Gen. Do you know the Dutcheſs of *Norfolk?*--Mr. *Bow.* Yes, Sir.

Att. Gen. Have you ſeen her?

Mr. *Bow.* Yes; I ſaw her come out of Mr. *Germaine*'s Houſe, in a Chair, into St. *James*'s Park.

Att. Gen. Was it the Dutcheſs of *Norfolk?*---Mr. *Bow.* Yes.

Att. Gen. Did you know her before?---Mr. *Bow.* Yes, Sir.

Att. Gen. Had you full Sight of her?---Mr. *Bow.* Yes, Sir.

Att. Gen. What Apparel was ſhe in?

Mr. *Bow.* In Man's Apparel, a Blue Coat and Peruke.

L. C. J. How long have you known the Dutcheſs of *Norfolk?*

Mr. *Bow.* Theſe eight or ten Years.

Serj. *Tremaine.* Do you believe it was the Dutcheſs of *Norfolk?*

Mr. *Bow.* I do verily believe it.

Serj. *Tremaine.* Do you take it upon your Oath?

Mr. *Bow.* I do verily believe it: The Dutcheſs being in a Chair, the Maid came running out of *Germaine*'s Houſe after her with a Hand-baſket.

Att Gen. When was this?---Mr. *Bow.* In *April* laſt.

L. C. J. Are you ſure it was the Dutcheſs's Maid?

Mr. *Bow.* She gave in Evidence as ſo in the Houſe of Lords.

Att. Gen. What is her Name?

Mr. *Bow. Frances Knight*, and ſhe had a Hand-baſket in her Hand.

Att. Gen. What did you obſerve in the Hand-baſket in her Hand?

Mr. *Bow.* I ſuppoſe there was Cloaths, for I ſaw the Tip of a Coat, or Gown, hang out.

Att. Gen. My Lord, we have brought this down ſo far———

L. C. J. Why, all is not within the Statute.---I muſt direct the Jury.

Att Gen. We have told you when it began. However, we will call another Witneſs.

Serj. *Thompſon. Mary Hall*, do you know Mr. *Germaine?*

Mary Hall. Yes, Sir.

Serj. *Thompſon.* Do you know where he lives?

Mary Hall. Yes, at the Royal *Cock-Pit*, in *Park-Street.*

Serj. *Thompſon.* Did you ever ſee the Dutcheſs of *Norfolk* in your Life-time?

Mary Hall. I canot tell whether I did or not, for I do not know her, ſo I cannot tell when I do ſee her.

Sir *W. Williams.* They have called about nineteen Witneſſes; for the firſt five we paſs over them, for they did not ſpeak one Word of any Thing ſince 86: And for the other, they have not proved any one Act in the Time of the Declaration betwixt Mr. *Germaine* and the Dutcheſs of *Norfolk:* They have not proved any Thing that hath any Tendency to it: They have not given any Manner of Evidence: If there be any Thing that hath any Tendency, it is that which *Jane Wadſworth* ſaith: And what is it that ſhe ſaith? Why, ſhe being a Woman that ſold Ale, ſhe had let a Pint Pot go to Mr. *Germaine*'s Houſe, ſo ſhe went for it; and the *Dutchwoman* that lived there, directed her to go up the Stairs for the Pint Pot. She ſweareth, that ſhe ſaw the Dutcheſs of *Norfolk*, and ſhe had a Petticoat on; and this is the Evidence that ſhe hath given. She doth not pretend that Mr. *Germaine* was in the Houſe, or in Company with the Dutcheſs; and ſhe appeareth to be a Stranger in the Houſe, and yet ſhe muſt run up Stairs. As for her Reputation, ſhe is one of the vileſt of Women. She would ſay ſomething in *March* or *May* laſt, but there is no Act proved by her; and ſhe is a vile and incredible Witneſs, we ſhall call Witneſſes to ſhew it.

Sir *Tho. Powis.* My Lord, for this Woman *Wadſworth*, we will not only call the Perſon ſhe ſpoke to of this, that will contradict her, and tell what ſhe did ſay, but go to her Credit and Reputation. So that now, my Lord, I believe, upon the whole Matter, we cannot do the Duke of *Norfolk* more Honour, than to acquit the Defendant; for it will be more Honour to the Duke of *Norfolk* to have the Defendant acquitted, than Satisfaction to him by giving him any Damages whatſoever.

Sir *W. Williams.* We will now call our Witneſs, *Grace Cook.* Do you know *Jane Wadſworth?*---*Grace Cook.* Yes, Sir.

Sir *W. Williams.* Tell my Lord, and the Jury, what Diſcourſe you and *Jane Wadſworth* have had together.

Grace. I will. She and I had ſome Talk together; and ſhe then ſaid, I could do them no Good, for I was miſtaken.

Sir *W. Williams.* When did ſhe tell you this? During the Sitting of the Parliament?

Grace. Yes: She came in and ſaid, I can do them no Good; for, ſaid ſhe, I did go into Mr. *Germaine*'s Houſe, and thought I had ſeen the Dutcheſs of *Norfolk*, but now I ſee I am miſtaken.

Sir *W. Williams.* You are a near Neighbour to her?---*Grace.* Yes, Sir.

Sir *W. Williams.* What is her Reputation?

Grace. I cannot ſay any Thing to her Reputation.

Sir *W. Williams.* Who was by?

Grace. There was another Woman.

Jane Wadſworth. I had a Subpœna, and as I was going to Mr. *Germaine*'s Houſe, there was one of his Servants; and I had like to have been knocked down: And there was one *Hall*; What, ſaid he, you are to go to be Witneſs? What, you will ſwear that the Dutcheſs lay with Mr. *Germaine?* And another ſaid, I deſerved to be at *Bridewell.*

L. C. J. Who was it that told you that you deſerved to be at *Bridewell?*

Jane Wadſworth. Hoſea, his Footman. My Lord, it was not a Fortnight ſince I was robbed: And it is not a Fortnight ſince there came in Perſons, and threatened me, and ſaid what they would do to me. It is not two Months ſince, that a Perſon or two did beat me, and had like to have knocked me down; and they ran into this Woman's Houſe (*Grace Cook*'s).

Serj. *Thompſon.* You are aſked, If thoſe Perſons that had like to have knocked you down, did not run into Mrs. *Cook*'s Houſe?

Jane Wadſworth. Yes.

Cryer. Call *Hall.*

Serj. *Tremaine.* The Queſtion is, Whether what Mrs. *Wadſworth* ſwore was true?

Hall. She ſaid ſhe happen'd to go for a Pint-pot to Mr. *Germaine*'s Houſe, and going up the Stairs for it, I thought I had ſeen the Dutcheſs of *Norfolk* then there, but I ſaw it was not ſhe: And one *Hoſea Grimſby* ask'd if ſhe was ſure if what ſhe ſaid was true? She ſaid ſhe would not ſay it for the World.

Att. Gen. What Trade are you?---*Hall.* A Joiner.

Att. Gen. Are you employ'd by Mr. *Germaine?*---*Hall.* Yes.

Att. Gen. How long ſince?

Hall. Why, ever ſince King *William* was crown'd.

Att. Gen. Have you been ever ſince employ'd by him?

Hall. No; by Times I have been.

Att. Gen. Upon your Oath, Who did you hear this Lady was, that uſed to come to *Germaine*'s Houſe?

Serj. *Levinz.* By the Oath you have taken, Did not you hear it was reported it was the Dutcheſs of *Norfolk?*----*Hall* Yes, Sir.

Serj. *Birch.* Did you not whiſper daily in the Ear, and ſay, That you believed her to be the Dutcheſs of *Norfolk?*

Hall. I cannot remember.

Serj. *Pemberton.* Was that Woman in ſuch a Condition as ſhe ſaith ſhe was?

Hall. No; I think that ſhe was in as good Condition as ſhe is now.

Serj. *Thompſon.* That could not be, ſhe was fain to be carried in a Chair to the Houſe of Lords.

Serj. *Trem.* Tell my Lord and the Jury, what you heard *Foſter*, the Duke of *Norfolk*'s Coachman, ſay of Mr. *Germaine?*

Hall. Why, he ſaid Mr. *Germaine* had done very ill in turning him off in *Ireland*, and he would be revenged of him.

—— Call *Foſter.*

Tho. Foſter. My Lord, Mr. *Hall* and I were ſpeaking ſomething of the Duke and Dutcheſs of *Norfolk:* Then I ſaid to him, that Mr. *Germaine* had done very ill by me, in turning me off in *Ireland*, but I did not ſay I would be revenged of him.

Hall. I happened to go to *Spring-Garden*, I ſaw *Thomas Foſter* carrying Water to the Horſes that were in the Stable; and after he and I had ſpoke to one another; What, ſays he, will not you make me drink this Morning? I told him I did not care if I did, and ſo we went to drink. Now, ſaid I to him, *Thomas*, are not you a fine Fellow to abuſe ſo good a Maſter, that would give you Money when you wanted it? Are not you ſorry for it? Yes, but it is too late: But the Devil, I think, had poſſeſs'd me. And he ſaid he was gotten drunk, and when a Man is drunk, he will ſay any thing: And, ſaid he, I remember not a Word I ſaid: And ſaid he, I hope my Maſter will pardon me: And he ſaid, that ſome were promiſed good Employments in the Duke's Service, but none had gotten any but one, and that is the Houſe-keeper: And he ſaid, She had better be a Houſe-keeper in Hell.

J. C. J. Did he ſay he had wrong'd Mr. *Germaine?*

Hall. Yes, he did, and ſaid he was drunk.

L. C. J. He was not drunk when he was in the Houſe of Lords. He ſaid he was ſorry that he had wrong'd his Maſter, and he hoped that he would pardon him.

Serj. *Trem.* We will call *Alexander Harman.* Did you ever ſee that Woman, *Jane Wadſworth*, in Mr. *Germaine*'s Houſe?

A. Harman. No, Sir.

Jane Wadſworth. Pray, my Lord, give me Leave, and will tell you how it was *Alexander Harman* came into my Houſe, and I told him I had ſeen the Dutcheſs of *Norfolk* at *Germaine*'s Houſe: I told him I wanted a Pint-pot that I had ſent to *Germaine*'s Houſe; and going thither, aſking the *Dutchwoman* for it, ſhe bid me go up the Stairs for it; and ſo I did, and then I ſaw the Dutcheſs of *Norfolk.* Said he to me, you ſhould not have gone up the Stairs for it; for if my Maſter ſhould know it, he would have killed the *Dutchwoman.*

Sir *W. Williams.* We will call another Witneſs. *Margaret Condy*, What did you hear this Woman *Jane Wadſworth* ſay?

Margaret Condy. She came to Mr. *Cook*'s with a Paper in her Hand, and, ſaid ſhe, I thought I had ſeen the Dutcheſs of *Norfolk* at Mr. *Germaine*'s Houſe; but now ſhe ſaid ſhe is better ſatisfied, that ſhe never did ſee her there.

Sir *W. Williams.* Did ſhe complain ſhe was beaten and bruiſed?

Margaret Condy. Not as I know of.

Serj. *Trem.* She and others were examined in the Lords Houſe, and the Lords would not believe them.

L. C. J. We do not know what the Lords did believe, or diſbelieve, they were examined ſo far as to enable them to make a Law; we muſt now hear what the Witneſſes ſay.

Sir *W. Williams.* We will call another Witneſs. *Frances Knight*, Pray, was you ever at Mr. *Germaine*'s Houſe?---*F. Knight.* No, my Lord.

L. C. J. The Woman, ſaid ſhe, talk'd with you there.

F. Knight. She will not ſay ſo to my Face.

L. C. J. Did you ever carry a Letter from the Dutcheſs to Mr. *Germaine*'s, or to any Perſon in his Houſe?

F. Knight. No, my Lord.

L. C. J. Mr. *Bowtell* ſaith, that he ſaw the Dutcheſs and this Maid. Was not you there in the Summer?---*F. Knight.* Never.

L. C. J. Never carried a Baſket?---*F. Knight.* Never.

L. C. J. Did you ever go with a Chair?---*F. Knight.* No.

L. C. J. Call Mr. *Bowtell* again. Is this the Maid that had the Baſket of Clothes?

Mr. *Bowtell.* Yes, I ſuppoſed them to be Clothes.

Att. Gen. Did ſhe come out of the Houſe when the Chair came?

Mr. *Bowtell.* The Chair came firſt out, and ſhe followed it preſently; and then I was near her, and knew her Face.

Att. Gen. Is this the Dutcheſs's Servant?

Mr. *Bowtell.* Yes, Sir; 'tis the ſame that followed the Chair. She was the Dutcheſs's Servant, I ſaw her then.

Att. Gen. When was this?---Mr. *Bowtell.* In *April* laſt.

Att Gen. F. Knight, was you not (upon your Oath) in *Germaine*'s Houſe in *April* laſt?---*F. Knight.* I broke my Leg then.

Att. Gen. How long ago was it you broke your Leg?

F. Knight. It was two Years.

Sir *W. Williams.* Was you in *April* laſt in *Germaine*'s Houſe?

F. Knight. No, Sir.

Sir *T. Powis.* Was this in open Day?

Mr. *Bowtell.* Sun was about Half an Hour high.

Sir *T. Powis.* We will call another Witneſs, one *Mary Penington.* Do you know one *Jane Wadſworth?* Was ſhe your Servant?

M. Penington. She was, and pretended to be ſick; and as I was informed afterwards ſhe was not: For there was a Man that gave Phyſick, and I bid him go and look upon my Maid, and he did ſo, and came to me and ſaid, Your Maid may be ſullen, but ſhe is not ſick; and coming to her, I found her ſullen. And afterwards I met her out of my Houſe; ſaid I, *Jane*, What do you do here? She made ſome Excuſe, and ſaid, She was not well. I told her I would take care of her: And how that they did not deſerve Servants that would not take Care of them when they were ill. I ſaw her muffled, and her Coats truſſed up; I walked after her, and, ſaid I, *Jane*, whither art thou a-going? and bid her let me ſee what ſhe had in her Coats; and I thought it was good to have Witneſs. I ſpake to one, and, ſaid I, Gaffer *Hall*, come hither; do you take notice that this Linnen is all mine. A good while after, I ſaw this *Jane Wadſworth* ſtanding at Mr. *Bird*'s, ſaid I, ſhe was my Servant ſeveral Years ago; and my Lord, this happened when the Difference was betwixt the Duke and Dutcheſs; for they ſaid, ſhe was a grievous Witneſs againſt the Dutcheſs. Upon this, Mr. *Tobſon*, my Lord *Peterborough*'s ſervant, ſent for me. Then I came to be a Witneſs.

Serj. *Thompſon.* How came ſhe to you firſt of all?

M. Penington. She was recommended to me firſt; and ſhe being minded to go away ſoon after ſhe came, I ſaid, *Jane*, if you will go, go: And then I obſerving when ſhe went away, her Clothes to be truſſed up, I walked after her into *Dean's-Yard*; I ſaid to her, *Jane*, what have you in your Coats? and there I found my Linnen.

Counſel for the Def. We will call another Witneſs, Mrs. *Penington*'s Maid.

Maid. I ſaw the Linnen that my Miſtreſs took from her, as ſhe ſaid.

Att. Gen. Did you ſee any?----*Maid.* Yes.

Counſel for the Def. We will call the Defendant's Man *William.* How long was your Maſter in *Flanders?*---*Will.* A Month.

Counſel for the Def. Was you and your Maſter with the King in *Ireland?*

Will. Yes; I went with him, and came back again with him.

Sir *W. Williams.* It's ſaid, he was at *Vaux-Hall* about three Years ſince.

Will. We were out of the Kingdom four Months.

Sir *T. Powis.* There is no material Evidence but what this Woman is. Now we will call another Witneſs. Mr. *Welborne*, Pray, tell my Lord, and the Jury, what Diſcourſe you have had with the Duke of *Norfolk* concerning his Dutcheſs.

Mr. *Welborne.* My Lord, about the Middle of *December* laſt, my Lord Duke was pleaſed to ſend for me to come to him; and ſo I came to Mr. *Negus*, and he carried me into the Duke of *Norfolk*'s own Room. Said he, there are ſome Treaties betwixt me and my Wife; Sir *Robert Clayton* and Sir *Robert Howard* are concerned in them.

There is one Thing that I find, my Wife is ſetting up to have a great Equipage; this I do not like. I hear, ſaid he, ſhe is about to have a Coach, Horſes, and two or three Footmen: And this is not all, there is *Caſtle-Riſing* that my Wife hath a Pretenſion to, and *Billing:* Now if ſhe will part with her Pretenſions in them, I ſhall take it well, and it may be for our good, and we may be reconciled. I know *Drayton* is a ſeat that ſhe hath a Kindneſs for: Pray tell my Wife of it, and let her conſider of it; if ſhe be willing to comply with me in this, I ſhall comply with her in that. And, ſaid he, I am told, if I bring a Bill of Divorce into the Houſe of Lords, it would take Effect. And ſo I went from the Duke of *Norfolk* to the Dutcheſs, and told her what the Duke ſaid: And my Lord of *Peterborough* hearing of it, he was angry that I went to the Duke.

Sir *W. Williams.* Did you acquaint the Dutcheſs, that if ſhe would part with her Pretenſions in *Caſtle-Riſing* and *Billing*, all Things might be reconciled?----Mr. *Welborne.* I did.

The Bill of Divorce was lodged in the Houſe of Lords in *January* following. There is one Thing, my Lord, that the Duke ſaid, that I had forgotten: He did ſpeak of Two thouſand five hundred Pounds, or ſome ſuch Thing, he could make of *Caſtle-Riſing* and *Billing.*

Att. Gen. My Lord, we will call ſome Witneſſes as to Mrs. *Wadſworth*'s Reputation, becauſe they ſpeak againſt it. Mr. *Dagley*, Senior, Do you know Mrs. *Wadſworth?*----Mr. *Dagley.* Yes.

Att. Gen. Pray, what Reputation is ſhe of?

Mr. *Dagley.* Very good Reputation.

Att. Gen. Was ſhe ever upon the Pariſh?

Mr. *Dagley.* Never in her Days.

Att. Gen. Mr. *Prince*, Pray do you know Mrs. *Wadſworth?*

Mr. *Prince.* Yes, Sir.

Att. Gen. What is her Occupation?

Mr. *Prince.* A Pains-taking Woman.

Att. Gen. What Reputation is ſhe of?

Mr. *Prince.* Of good Reputation.

Wadſworth. My Lord, I would not live with *Penington* any longer, for ſhe kept a diſorderly Houſe.

One of the Jury. Pray, what is that ſhe ſaith?

L. C. J. She ſaith Mrs. *Penington*, with whom ſhe lived, kept a diſorderly Houſe.

Jane Wadſworth. My Lord, I kept a Houſe, and paid Sixty Pounds a Year for the *Bear-Inn*; and, my Lord, my Huſband lay ſick a great while; and he having a mind to go into the Country for his Health, I had fifteen Shillings of the Church-wardens, or Overſeers; and that was all that ever I had.

Att. Gen. We will call another Witneſs, one *Emry Argus.* Pray how long have you known Mrs. *Wadſworth?*----Mr. *Argus.* Many Years.

Att. Gen. What Reputation was ſhe of?

Mr. *Argus.* She was always accounted an honeſt, laborious, Pains-taking Woman.

Att. Gen. Whether ſhe did keep the *Bear-Inn?*---*Argus.* She did.

Att. Gen. Was ſhe ever kept at the Pariſh Charge?

Argus. No.

Att. Gen. Was ſhe ever in the Poor's Book?

Argus. No.

Att. Gen. We have proved by three ſubſtantial People, who all ſay, that ſhe was always accounted an honeſt, laborious Woman.

L. C. J. Do you obſerve what you have proved? You have proved no laſcivious Converſation; becauſe you ſpeak of that in the opening of the Evidence. You have not proved any laſcivious Converſation within theſe ſix Years.

Att. Gen. The Court ſaith, That we have not proved the Dutcheſs to go beyond Sea. We will call a Witneſs, Mr. *Negus*. Pray did the Dutcheſs go over with the Duke? The Duke came back; did the Dutcheſs come with him?

Mr. *Negus*. The Dutcheſs came over again in Eighty-ſix; after that, ſhe ſtayed in *England* ſome time: And about the time of the Revolution, then it was given out that ſhe was gone over again.

Att. Gen. What Time was it that you heard ſhe came back?

Mr. *Negus*. In Eighty-nine: I can inform the Court, if they pleaſe; the Time when my Lord was ſued for Alimony.

(*A Letter was then read in Court, from the Duke to the Dutcheſs.*)

Serj. *Thompſon*. This Cauſe hath been in the Houſe of Lords: Whether they believed, or not believed, was not the Queſtion; but they would have ſome Time to make ſome Proofs at Law.

Att. Gen. For, as all unlawful Converſations muſt have a Beginning, it is neceſſary we ſhould ſhew ſomething of that, and the Time, and that doth fortify the Evidence that is given within the Time.

Sol. Gen. Pray, my Lord, if your Lordſhip pleaſes, this is the Uſe we make in giving in Evidence ſome Things before, to ſhew the Fact within the ſix Years, their frequent meeting in a laſcivious Manner; and we make Uſe of that before the ſixth Year, to explain what Uſe we make of it in Matters done within the ſix Years.

Serj. *Tremaine*. I do appeal to your Lordſhip, and all that hear me, whether within theſe ſix Years they have proved any laſcivious Action, or any indecent Action; ſo that this will not charge the Defendant: For if the Dutcheſs will come to his Houſe when he is not at home, he cannot help it. All the Proof is without the ſix Years, and no Proof within the ſix Years, to charge him to commit ſuch a Crime: If they had carried it down, as to have proved Acts within theſe ſix Years, I I ſhould have ſaid they had done ſomething.

L. C. J. Have you done?

Gentlemen of the Jury, You underſtand very well the Nature of this Action, and the Record hath been opened to you, which was to this Effect:

That the Defendant, the firſt Day of *April*, in the ſecond Year of King *James*, did entice away the Plaintiff's Dutcheſs, whereby he had not the Benefit of her Society; and that he had laſcivious Converſation with her, lived in Adultery with her, and cauſed her to commit Adultery.

The Defendant pleaded, That he did not commit any thing within theſe ſix Years: What hath been before, is not now to be taken Notice of. But the Plaintiff's Counſel hath given in Evidence ſome Acts before, which is not for any Damage they expect, but to explain ſome Actions that have been between them.

For my Part, I muſt declare, that theſe Matters may be given in Evidence to explain, but they are not to be given in Evidence to any other Purpoſe.

The firſt Witneſs is one *Owen*, and he telleth you, that he was ſent to *Whitehall*, and he ſaith, That he went into the Lodgings there, and then he did ſee the Dutcheſs and *Germaine* in bed together.

Then there is another Witneſs proves it at another Time and Place, that is, *Margaret Ellwood*, and ſhe telleth you in what Manner ſhe found the Dutcheſs and *Germaine*, and *Germaine* was very angry at her; and that his Hat and Sword lay upon the Table: And you are told by her, that looking through the Key-hole, ſhe perceived them in Bed; ſhe ſaid the Curtain at the Bed's-Feet was actually open, and ſhe ſaw them in Bed together, and found *Germaine*'s Handkerchief and Ruffles in my Lady's Bed.

The next Witneſs is one *Anne Benſkin*, and ſhe ſaith, They were in Expectation of him one Night at *Windſor*: They ſtayed up till Two o'Clock, and laid Chairs and Stools in his Way, that if he came he might fall; but he did not come down that Time: All this is about ſeven Years ago, and out of the Time mentioned in the Declaration. And then after, they come and begin about the Year Eighty-nine, and they tell you of a Lodging at *Vaux-Hall*, at one *Scriber*'s Houſe, for a Couple of Ladies, one went by the Name of *Bateman*, and the other *Brian*; during that Time, the Man of the Houſe knew nothing of one that went by the Name of Mr. *Germaine*, but of my Lady's Brother, he had been ſeen walking in the Garden: They tell you, they have ſeen the Lady that went by the Name of the Lady *Bateman*, and that very Lady was the Dutcheſs of *Norfolk*. And the Waterman ſaith, that he hath carried him often by Water, and he went by the Name of my Lady *Bateman*'s Brother; he hath carried him from the Stairs at *Channel-Row* to *Vaux-Hall*, when the Lady *Bateman* lodged there; and hath carried Wood from *Vaux-Hall*, by the Lady *Bateman*'s Order, to the *Cock-Pit*: And there is no manner of Queſtion but Mr. *Germaine*'s Houſe is at the *Cock-Pit*. But then they come to Mrs. *Wadſworth*, and ſhe is a Woman that lived next Door; and ſhe had occaſion to go to *Germaine*'s Houſe for a Pint Pot, and there coming, ſhe met with a *Dutchwoman*, and aſked her for the Pint Pot; ſhe ſaith, ſhe bid her go up Stairs for it, which ſhe did; and then ſhe ſaw the Dutcheſs of *Norfolk* undreſſed in a Morning-Gown: She ſaid, ſhe very well knew her, ſhe had ſeen her very many times, and ſhe was ſure this was the Dutcheſs of *Norfolk*. She telleth you, that at another time, I think it was in *May* laſt, ſhe did ſee Mr. *Germaine* go to the *Mill-bank*; ſhe was ſure it was him, and ſhe did think he would go there, and thereupon ſhe dodged him from that very Place.

She ſaid, ſhe told one *Harman* that ſhe had ſeen the Dutcheſs of *Norfolk*.

How, ſaid he, if my Maſter had ſeen you, he would have killed the *Dutchwoman*.

Then cometh one *Foſter* the Coachman, and ſaith, That about four Years ſince he had carried the Dutcheſs of *Norfolk* and Mr. *Germaine* oftentimes; and one time he driving them, looking back, he ſaw Mr. *Germaine* and the Dutcheſs of *Norfolk* lying with their Heads together. Then cometh *Bowtell*, and he telleth you, that in *April* laſt he ſaw the Dutcheſs of *Norfolk* come out of *Germaine*'s Houſe in a Chair, and ſhe was the Dutcheſs, and in Man's Apparel: And he ſaid there was an old Maid had a Hand-baſket, with ſome Cloaths, as he believed; ſhe followed the Chair: And this was the Servant of the Dutcheſs of *Norfolk*.

Now, *Gentlemen*, theſe are the Witneſſes that prove to you the Iſſue in the Time mentioned.

Now, *Gentlemen*, they have called ſome to diſcredit theſe, they begin with *Jane Wadſworth*; they bring one *Condy* that ſhould ſay, that ſhe heard *Jane Wadſworth* ſay, That ſhe thought at the firſt it was the Dutcheſs of *Norfolk*, but ſhe was miſtaken. Then they call ſome more Witneſſes, that is, Mrs. *Penington*, that was her Miſtreſs twelve Years ago; and ſhe ſaid, that ſhe pretended to be ſick a-while after ſhe had been with her, and ſo going away, ſhe ſeeing her Cloaths tuck'd up, went to ſee what was the matter; ſhe had ſome of her Linen: She ſaid, ſhe lived with her not above a Fortnight, and ſo ſhe parted. She ſaith, ſhe was indigent and poor; and her Maid ſaith the ſame.

And then they bring another Witneſs againſt one *Foſter* the Coachman, telling him of what he had ſaid againſt Mr. *Germaine*: He ſaid, he was gotten drunk, and when a Man is drunk he will ſay any thing.

Then as to *Bowtell*; whereas he ſaith, he ſaw the Dutcheſs in Man's Apparel come out of Mr. *Germaine*'s Houſe, and the Maid was there; and the Maid cometh and ſaith, that ſhe was not there, ſhe was ill, and her Leg was broke, and denieth that ever the Dutcheſs was there, or that ſhe ſaw her in a Chair, or in Man's Apparel.

Now, for *Anne Read*; no Evidence at all is againſt her Teſtimony, and ſhe is very poſitive of what was done in *May* laſt.

They have called one *Welborne*, who ſaith, that the Duke ſent for him, and after ſome other Diſcourſe, ſpoke to him about *Billing* and *Caſtle-Riſing*; and he ſaith the Duke ſent to him, to let the Dutcheſs know, if ſhe would not comply with him, he did not queſtion but to proſecute a Bill of Divorce in the Houſe of Lords with effect. They tell indeed of *Foſter*, that *Germaine* had turned him out of his Service; that he ſhould ſay, he would be revenged on him; but he denied that.

And then the Dutcheſs's Letter in Eighty-ſeven was read: I cannot ſee what Inference you can make of it, but that the Duke had no Deſign of ſhewing an Unkindneſs; you have heard the Letter read, and you may make your Inference as you will.

Then as to Mrs. *Wadſworth*; they have brought ſome Perſons to ſpeak to her Reputation, and they tell you ſhe is an induſtrious Woman, and of fair Converſation, and rented a Houſe of Sixty Pounds *per Annum*. As to what they alledged ſhe was kept by the Pariſh, it is no ſuch thing; but her Huſband being ſick, and about going into the Country, the Church-Wardens helped him with about fifteen Shillings: That ſhe was never in the Poor's Rates, or in the Poor's Books. And then as to Mrs. *Penington*, what ſhe ſaith againſt her, ſhe anſwereth thus, that why ſhe did live no longer with her, ſhe ſaith, her Miſtreſs kept a diſorderly Houſe.

The Queſtion will be, What was betwixt the Dutcheſs and the Defendant within ſix Years; if you are ſatisfied that there hath been any ſuch laſcivious Converſation? For if ſo be that it was only before the ſix Years, to what Purpoſe was their meeting at *Vaux-Hall*, and taking a Houſe at *Vaux-Hall*; and to what Purpoſe the Dutcheſs came to *Germaine*'s Houſe? So that it is left to you, *Gentlemen*, to conſider, if there hath been unlawful Converſation, and laſcivious Intercourſe between the Dutcheſs and the Defendant within theſe ſix Years; if ſo, you are to find for the Plaintiff; but if not, you are to find for the Defendant.

The next Morning the Jury brought in their Verdict into Court, and being aſked, Whether they found for the Plaintiff, or Defendant? ſaid, for the Plaintiff.

Being aſked what Damages? They ſaid One Hundred Marks Damages, with Coſts of Court *.

Upon which they had a ſevere Reprimand from the Court, for giving ſo ſmall and ſcandalous a Fine.

* *The Complete Hiſtory of* England, (*publiſhed by* Biſhop Kennet), Vol. III. pag. 668, *ſays*, That "During this Seſſion, the Town was entertained with the Trial of an indecent Cauſe in *Weſtminſter-Hall*. The Duke of *Norfolk* bearing with Impatience the ſuſpected Commerce which Mr. *Germaine* had maintained with his Dutcheſs, had the laſt Winter *lodged a Bill of Divorce in the Houſe of Peers; but their Lordſhips being unwilling to proceed in that Affair, before there were ſome Proofs of the Fact made in the Courſe of the Common Law*, His Grace did thereupon bring an Action of Adultery againſt Mr. *Germaine*, before the Court of *King's-Bench*. This notorious Cauſe was tried on the Twenty-fourth of *November*, and upon a full Hearing of many obſcene Evidences, the Jury found for the Plaintiff, and allowed His Grace *One hundred Marks Damages, with Coſts of Court*: Where the Slightneſs of Satisfaction was almoſt as great a Reproach as the Crime itſelf."

The Biſhop ſays, *The Duke had lodged a Bill of Divorce*, &c. But by the foregoing Proceedings, it appears they examined Witneſſes, heard Counſel, and then flung out the Bill.

But in 1699, His Grace obtain'd an Act of Parliament for a Divorce, (See Vol. V. p. 239.) and the Dutcheſs afterwards married Sir *John Germaine*, Bart.

XLV. *The Proceedings againſt the Biſhop of* Rocheſter * *before the* Lords *of the Privy Council*, 1692, 4 Will. & Mariæ, *in Relation to a Plot to Reſtore King* James *the Second.*

Written by the Bishop *Himſelf.*

ON *Saturday*, the ſeventh of *May*, of this preſent Year 1692, in the Evening, as I was walking in the Orchard at *Bromley*, meditating on ſomething I deſigned to preach the next Day, I ſaw a Coach and four Horſes ſtop at the Gate, out of which two Perſons alighted. Immediately I went towards them, believing they were ſome of my Friends coming to give me a Viſit. By that Time I was got to the Gate, they were entered into the Hall, and met me about the Middle of the Court. The Chief of them perceiving me to look wiſtly on them, as being altogether Strangers to me, *ſaid*, My Lord, perhaps you do not know me: my name is *Dyve*; I am Clerk of the Council, and here is one of the King's Meſſengers. I am ſorry I am ſent on this Errand; but I am come to arreſt you upon Suſpicion of High Treaſon.

Sir, *ſaid I*, I ſuppoſe you have a Warrant for ſo doing; I pray let me ſee it. He ſhewed it me: I read it; and the firſt Name I lighted on being the Earl of *Nottingham*'s, *I ſaid*, Sir, I believe this is my Lord *Nottingham*'s own Hand, and I ſubmit. What are your Orders how to diſpoſe of me? My Lord, *ſaid he*, I muſt firſt ſearch your Perſon, and demand the Keys you have about you. My Keys I preſently gave him. He ſearched my Pockets and found no Papers, but ſome poor Notes of a Sermon, and a Letter from Mr. *B. Fairfax* about ordinary Buſineſs.

Now, *ſays he*, My Lord, I muſt require to ſee the Rooms to which theſe Keys belong, and all the Places in the Houſe where you have any Papers or Books. I ſtraight conducted him up Stairs into my Study. This, Sir, *ſaid I*, is the only Chamber where I keep all the Books and Papers I have in the Houſe. They began to ſearch, and with great Readineſs turned over every Thing in the Room, and Cloſets and Preſſes, ſhaking every Book by the Cover, opening every Part of a Cheſt of Drawers, where were many Papers, particularly ſome Bundles of Sermons; which I told them were my proper Tools, and that all that knew me, could vouch for me; it was not my Cuſtom to have any Treaſon in them. They read ſeveral of the Texts, and left them where they found them. But in one Corner of a Preſs, which was half open, they met with a great Number of Letters filed up. I aſſured them they were only Matters of uſual friendly Correſpondence, and moſt of them were of laſt Year's Date. Mr. *Dyve* looking on ſome of them, found them to be ſo; *and ſaid*, If he had Time to view them all, he might, perhaps, ſee Reaſon to leave them behind; but being expreſly commanded to bring all Letters, he muſt carry them with him. I left him to do as he pleaſed; ſo they ſealed them up.

Then they went into my Bed-chamber, and the Cloſets adjoining, doing as they had done in my Study, feeling about the Bed and Hangings, and knocking the Wainſcot in ſeveral Places, to ſee if there were any private Hole, or ſecret Conveyance.

After that, they came down Stairs, and ſearched the Parlour and Drawing Room on that Side of the Houſe with the like Exactneſs. In all theſe Rooms I obſerved they very carefully pryed into every Part of the Chimnies; the Meſſenger putting his Hand into every Flower-Pot, which I then ſomewhat ſmiled at: But ſince I found he had but too much Reaſon ſo to do.

When they had done ſearching in all thoſe Rooms, and in the Hall, as they were going out, and had taken with them what Papers they thought fit, they carried me away in the Coach that brought them. By the Way, we met my Servant, Mr. *Moor*, coming from *London:* I called out to him, Have you any Letters for me? He gave me three or four, which I delivered to Mr. *Dyve* to open, who found nothing in them but Matters of private Concernment, or ordinary News. And ſo between Ten and Eleven at Night we arrived at *Whitehall*, and I was brought to my Lord *Nottingham*, whom I found alone in his Office.

My Lord, *ſaid I*, I am come upon your Warrant; but certainly there muſt be ſome great Miſtake, or black Villainy in this Buſineſs: For I declare, as in the Preſence of God, I am abſolutely free from any juſt Accuſation relating to the Government. *His Lordſhip told me*, He himſelf was much ſurprized when he heard my Name mentioned. I intreated him I might be examined that Night, if any Witneſſes could be produced againſt me. *He ſaid*, That could not poſſibly be, becauſe the Lords, who had the Management of ſuch Affairs, were ſeparated, and gone Home: But that I was to appear before them the next Day; and in the mean Time, all the Civility ſhould be ſhewn me, that could be expected by a Man in my Condition.

My Lord, *ſaid I*, I hope, it being ſo very late, you will ſuffer me to lie at my own Houſe at *Weſtminſter*. *He replied*, You ſhall do ſo; but you muſt have a Guard of Soldiers and a Meſſenger with you. A Guard of Soldiers, *ſaid I*, My Lord, methinks is not ſo neceſſary to ſecure one of my Profeſſion; I ſhould rather offer, that I may have two or more Meſſengers to keep me, though that may put me to greater Charges. My Lord, *ſaid he*, I, for my own Part, would be glad if I might take your Parole; but I muſt do what I may anſwer to others, and therefore I pray be content.

At this I acquieſced; *only adding*, My Lord, here are divers Papers brought up with me, which upon my Credit, are but of common Importance; yet, becauſe they are moſt of them private Talk among Friends, there may be ſome Expreſſions, which no Man, if it were his own Caſe, would be willing to have divulged; and therefore I deſire your Lordſhip will take Care they may not be ſhewn to the Prejudice of any. *He anſwered*, You have to do with Men of Honour: And you ſhall have no Occaſion to complain upon that Account.

And ſo I was conveyed Home to *Weſtminſter* by Mr. *Dyve* and Mr. *Knight*, Meſſenger, in the Coach with me, and a Guard attending on each Side. After we came to the Deanery, Mr. *Dyve* having diligently ſurveyed my Lodgings, and the Avenues to them, left me about Midnight, with a ſtrict Charge to the Meſſenger and Soldiers, not to give me any unneceſſary Diſturbance; but to watch carefully at my Bed-Chamber Door, 'till further Orders, which they did.

The next Day, being *Sunday*, *May* the eighth, Mr. *Dyve* came again to me about Noon, to acquaint me, That I was to attend the Committee of the Council that Evening by Six of the Clock. And, *ſays he*, My Lord, I ſuppoſe you have here alſo at *Weſtminſter*, a Room where you keep the reſt of your Books and Papers. I told him, I had. Then, *ſaid he*, I have a Commiſſion to ſearch there likewiſe; particularly in your Cabinet. I ſhewed him my Library, and gave him the Keys. He opened all the Preſſes of Books, and viewed particularly every Shelf, and examined every Drawer in the Cabinet: But finding nothing there of a late Date, or that might afford any the leaſt Shadow of a Traitorous Correſpondence, he went away without removing any one Paper thence.

At the Time appointed, I was brought by the Meſſenger and Guard to *Whitehall*, where a ſelect Number of the Lords of the Council were aſſembled at my Lord *Nottingham*'s Lodgings. There were preſent, (as I remember) the Earl of *Devonſhire*, Lord Steward; the Earl of *Dorſet*, Lord Chamberlain; the Earl of *Nottingham*, Secretary of State; the Earl of *Rocheſter*, the Earl of *Portland*, the Lord *Sydney*, Lord Lieutenant of *Ireland*, and Sir *Edward Seymour*.

When I was entered the Room, and come to the End of the Table, my Lord *Nottingham* began.

Earl of Nottingham. My Lord, you cannot but think it muſt be ſome extraordinary Occaſion which has forced us to ſend for you hither in this Manner.

Biſhop of Rocheſter. My Lord, I ſubmit to the Neceſſities of State, in ſuch a Time of Jealouſy and Danger as this is.

Earl of N. My Lord, I am to aſk you ſome Queſtions, to which we deſire your plain and true Anſwers.

Biſhop of R. My Lords, I aſſure you mine ſhall be ſuch; as, I hope, I have been always taken for a Man of Simplicity and Sincerity.

Earl of N. Have you compoſed a Declaration for the preſent intended Deſcent of the late King *James* into *England?*

Biſhop of R. I call God to Witneſs, I have not.

Earl of N. Did you ever draw up any Heads, or Maertials for ſuch a Declaration?

Biſhop of R. Upon the ſame ſolemn Aſſeveration, I never did.

Earl of N. Were you ever ſollicited, or applied to by any Perſon, for the undertaking ſuch a Work?

Biſhop of R. I never was.

Earl of N. Do you hold any Correſpondencies abroad in *France?*

Biſhop of R. I do not hold any.

Earl of N. Have you ever ſigned any Aſſociation for reſtoring the late King *James?*

Biſhop of R. I never ſigned any.

Earl of N. Do you know of any ſuch Aſſociation? Or any Perſons that have ſubſcribed one?

Biſhop of R. Upon the Word of a Chriſtian, and a Biſhop, I know of no ſuch Thing; nor of any Perſon who has ſubſcribed any Paper of that Nature.

Sir Edward Seymour. My Lord Biſhop of *Rocheſter*, We have examined the Papers that were ſeized in your Cloſet at *Bromley:* We find nothing in them but Matters of ordinary and innocent Converſation among Friends; only we have one Scruple, That there are few or no Letters among them written ſince *Lady-Day* laſt.

Biſhop of R. Sir, I ſuppoſe there may be ſome of a Date ſince that Time in the Bundles: If I had preſerved more, they would have been of the ſame Nature with the reſt that you have, that is, concerning common Intelligence, and the Talk of the Town; not any Secrets of State, or againſt the Government. My Lords, I hold no Correſpondencies of that Kind. When I am in the Country, I deſire ſome Friend or other here, to let me know how the World goes, that I may inform myſelf, and the neighbouring Gentlemen, of the Truth of Things, and prevent the ſpreading of falſe News: And afterwards I file up ſuch Letters, according to their Dates (as you may perceive I did theſe), that at any Time I may have a preſent Recourſe to them to refreſh my Memory in any paſt Tranſaction.

My Lords, Thoſe are all I thought worth keeping of this Kind theſe two laſt Years: And I hope the Clerk of the Council has done me the Juſtice to acquaint your Lordſhips, how I was apprehended, out of my Houſe; and how narrowly I myſelf, and my Study, and Lodging-Chamber, and other Rooms, were ſearched: So that it was impoſſible for me to have ſuppreſſed or ſmothered any one Writing from you; and really I believe there was not a Note, or leaſt Scrip of Paper of any Conſequence in my Poſſeſſion, but they had a View of it.

Earl of Devon. But, my Lord, it is probable a Man of your Intereſt and Acquaintance, muſt have received more letters ſince than are here to be found. We ſee here are many concerning Affairs that paſſed juſt before that Time.

Biſhop of R. My Lords; A little before the Concluſion of the laſt Seſſion of Parliament, I obtained Leave of the Houſe of Lords to retire into the Country for the Recovery of my Health. During my Abode there, as long as the Parliament continued, I was ſomewhat curious to learn what

* Dr, *Sprat.*

what paſs'd in both Houſes; and therefore, as your Lordſhip has obſerv'd, Letters came thicker to me about that time: But when the Parliament was up, very little happening that was remarkable in that Interval, I was not ſo mindful to preſerve the Letters that came to me, whilſt all Things, both Abroad and at Home, were rather in Preparation than Action.

Beſides that, ſince the Time your Lordſhips ſpeak of, I was twice or thrice in Town for ſeveral Days together; once eſpecially, upon a publick Occaſion, the Annual Election of *Weſtminſter* School, which detain'd me here about a Week: And theſe are the true Reaſons why you find ſo few Letters to me ſince the Date of Time your Lordſhips have mentioned.

Earl of N. Will it pleaſe your Lordſhips to aſk the Biſhop of *Rocheſter* any more Queſtions?

They being all ſilent, *I ſaid*,

My Lords, I cannot imagine how it comes to paſs, that I ſhould be thus ſuſpected to be guilty of any Contrivance againſt the Government: I think I may appeal to all that know me, I am ſure I may to all my Neighbours in the Country, where I live, that there has no Man ſubmitted to it more peaceably and quietly than I have done, ever ſince the *Revolution*; and I muſt own, I did it both upon a Principle of Conſcience and Gratitude. Of Conſcience; becauſe I cannot ſee how the *Church of England*, and the *Whole Proteſtant Religion*, can be preſerv'd, but upon this Foundation; ſince an Invaſion from *France* cannot but be deſtructive to *Both*. And of Gratitude; becauſe, as you all know, I happen'd to be, in the late Reign, engag'd in an Affair, which ſince I have been taught was illegal. [*The Eccleſiaſtical Commiſſion.*] And though I may ſay, I ſtopp'd betimes, and did no great Hurt, but hindered, as much as I could, whilſt I acted; yet I acted ſo long, that I might have expected to be ſeverely puniſh'd for what I did. But the King's and Queen's Part, in the General Pardon, was ſo gracious and benign, in making it their own Act, and not exeluding me out of it, that their Majeſties have thereby laid on me an Obligation never to be forgotten.

Upon this I was bid to withdraw; and about an Hour after, the ſame Clerk of the Council was ſent to tell me, The Lords had order'd I ſhould return to my own Houſe, and be under the ſame Confinement as before, of a Meſſenger, and a Guard of Soldiers: And there I ſhould ſhortly hear what their Lordſhips would determine concerning me. *He likewiſe told the Meſſenger and the Guards*, That he had a ſtrict Command to them, to uſe me with all Reſpect; only to take Care that I ſhould be ſafely kept, and forth-coming. Nor indeed had I any thing to object againſt their Behaviour: For, as Mr. *Dyve* demean'd himſelf always to me like a Genleman, and the Meſſenger was very Civil, ſo the Soldiers themſelves were as eaſy and quiet to the reſt of my Family, as if they had been a Part of it.

The ſame Evening Mr. *Dyve* came Home to me, and brought me all my Papers, telling me, That the Lords had heard him read them over: and, having no Exception againſt them, had ſent him to return them all ſafe to me again.

Thus guarded, I continued from that Day, 'till the 18th of *May*, under the Cuſtody of a Meſſenger, and of four Centinels, who watched Day and Night, and were relieved every eight-and-forty Hours.

But then, having heard nothing in the mean Time from the Lords, I wrote this Letter to the Earl of *Nottingham*.

My Lord,

" AS I have all this while, according to my Duty to their Majeſties " Government, with Patience and Humility ſubmitted to my Con- " finement under a Guard of Soldiers and a Meſſenger; ſo now, fear- " ing that my longer Silence may be interpreted as a Miſtruſt of my " Innocency, I think it becomes me to make this application to " your Lordſhip, earneſtly entreating you to repreſent my Condi- " tion and Requeſt to the Moſt Honourable Board, where I was exa- " mined. I entirely rely on their Juſtice and Honour, that, if they " find nothing real againſt me, (as God knows, I am conſcious to myſelf " they cannot) they would be pleaſed to order my Enlargement. I am " forced to be the more importunate with your Lordſhip in this Buſineſs, " becauſe it is very well known, in what a dangerous Condition of " Health I went out of Town towards the latter End of the Seſſion of " Parliament: And I find my Diſtemper very much increaſed by this " cloſe Reſtraint, in a Time when I was juſt entering upon a Courſe " of Phyſick in the Country.

My Lord,
I am Your Lordſhip's moſt humble,
and moſt obedient Servant,

May 18. *Weſtm.* Tho. Roffen.

To the Right Honourable the
Earl of *Nottingham*, Principal
Secretary of State.

This Letter was read in the Cabinet-Council that Day, and it had the deſired Effect; for thereupon I was ordered to be diſcharged that Evening; which accordingly was done at Ten at Night, by Mr. *Shorter*, a Meſſenger of the Chamber, coming to my Houſe, and diſmiſſing the Meſſenger, and taking off the Guard.

The next Morning, being *May* the 19th, to prevent any Concourſe, or Congratulations, uſual upon ſuch Occaſions, I retired early to *Bromley*, where I remained quiet 'till *June* the ninth, little dreaming of a worſe Miſchief ſtill hanging over my Head.

But that Day, being *Thurſday*, as I was upon the Road, coming to *Weſtminſter*, to the Meeting of Dr. *Buſby*'s Preachers, who aſſemble once a Term at my Houſe there, I was ſtopt by a Gentleman, that brought me this Letter from my Lord *Nottingham*.

My Lord, *Whitehall, June* 8, 1692.

I *Muſt deſire your Lordſhip to be at my Office on* Friday *Morning by Ten of the Clock.*

I am your Lordſhip's
Moſt humble Servant,
Nottingham.

For the Right Reverend the
Lord Biſhop of *Rocheſter*,
at *Bromley*.

I aſked the Bearer, whether he had any farther Orders concerning me? *He anſwered*, No: But was forthwith to return. I deſired him to acquaint his Lord, that I was now going to Town upon other Buſineſs, but that I would preſently wait on him at *Whitehall*: Accordingly from *Lambeth* I went to his Office. When my Lord came to me, I told him, that having met with his Lordſhip's Letter accidentally in my Way to *Weſtminſter*, I thought it beſt to come preſently to know his Pleaſure.

Earl of N. My Lord, there is a Miſtake; I gave you Notice to be here To-morrow Morning; And that is the Time you are appointed to appear before the Committee of the Council.

Biſhop of R. However, My Lord, being in Town occaſionally, I thought it became me to preſent myſelf to you as ſoon as I could: And I now make it my Requeſt, if your Lordſhips have any thing farther to ſay to me, I may be convened before you this Day.

Earl of N. I fear you cannot be ſo, for there is much Buſineſs to be this Afternoon, both at the Great Council, and the Committee; but I will ſend you Word to the Deanery, if you can be called this Evening: In the mean Time you have your full Liberty to go where you pleaſe.

Thus I went Home: but having no Notice from my Lord that Night the next Day, being *June* the 10th, about Ten of the Clock, I came to his Lordſhip's Office, where were met the ſame Lords as before; only, I think, the Earl of *Portland* was not there, and the Earl of *Pembroke*, Lord Privy-Seal, was.

When I was called in, beſides the Privy Councillors that ſat about the Table, there was ſtanding againſt the Wall a very ill-favour'd Man, who afterwards prov'd to be *Blackhead*; with whom I ſtrait perceiv'd I was ſent for to be confronted.

For, as ſoon as I was in the Room, my Lord *Nottingham* ſaid, My Lord, Do you know that Perſon?

Biſhop of R. My Lord, I have ſeen this Man's Face, but I cannot immediately recollect where.

Earl of N. I pray view him well. Has he never brought you any Letters from one Mr. *Young?*

Biſhop of R. I do call to Mind, he has brought me a Letter. I cannot in a Moment remember from whom it was.

Earl of N. He ſays it was from one *Young*.

Biſhop of R. I think it was at my Houſe at *Bromley* that he deliver'd it me; but I verily believe, it was not from any of the Name of *Young*.

Blackhead. I was with the Biſhop of *Rocheſter* at *Bromley:* I brought him a Letter from Mr. *Young*, and I received an Anſwer to Mr. *Young* back again from the Biſhop.

Thus far, during the beginning of this Examination, I ſtood with my Face againſt the Window, and my Eyes being ſo very tender and feeble as they are, I had not a perfect View of *Blackhead*; but he ſo confidently affirming, That he had of late carried Letters between me and one *Young*, I changed my Station, and got the Light on my Back; and then immediately, having a true Sight of his very remarkable Countenance and Habit, and whole Perſon, and being alſo much aſſiſted by his Voice, which is very loud and rude, I did (by God's Bleſſing) perfectly call him to Mind.

Biſhop of R. Now, my Lords, by the Advantage of this Light, I do exactly remember this Fellow, and Part of his Buſineſs with me at *Bromley*. What he ſays of *Young* cannot be true. I know not for what Purpoſe he affirms this; but upon my Reputation, it is utterly falſe, that he ever brought me a Letter from one *Young*.

Earl of N. My Lord, He ſays particularly, it was upon a Faſt-day.

Biſhop of R. My Lords, I do remember this Fellow was with me at *Bromley* on a Faſt-Day: By the ſame Token, I told him, he ſhould ſtay 'till after Evening-Prayers, and muſt expect only a faſting kind of Meal. But then I would return an Anſwer to his Buſineſs.

Blackhead. It was upon a Faſt-Day. I did eat with the Biſhop's Servants; and I received an Anſwer from his own Hand, to the Letter I brought him from Mr. *Young*.

Biſhop of R. My Lords, This that he ſays of *Young* is a wicked Lye: All my Correſpondencies are ſo innocent (as I hope your Lordſhips can teſtify) that, if I had received a Letter from any Mr. *Young*, I ſhould have no Reaſon ſo poſitively to deny it. I beſeech you, examine this Fellow thoroughly, and I doubt not but you will diſcover ſome impudent Knavery. I ſtand to it; I am ſure there is no Perſon whoſe Name is *Young*, with whom I have of late Years maintain'd any Intercourſe by Letters.

Earl of Devonſhire. My Lord, Is there no Perſon of the Name of *Young*, a Clergyman, with whom you are acquainted?

Biſhop of R. Oh! My Lord, there are two excellent Perſons of the Name of *Young*, both Clergymen, to whom I have the good Fortune to be very well known: The one was your Brother *Oſſory*'s Chaplain, and is now Prebendary of *Wincheſter*; the other was Canon of *Windſor*, when I was a Member of that Church, and is there ſtill. But I ſuppoſe, neither of theſe are the *Youngs*, whoſe Correſpondence this Man objects to me. I ſhould take it for an Honour to correſpond with them. But, in Truth, it has ſo happen'd, that I have neither written to, nor received one Letter from either of them theſe many Years, to the beſt of my Knowledge.

Blackhead. The Biſhop, if he pleaſe, may remember it was *Robert Young*, from whom I brought him a Letter.

Earl of N. How long ago ſay you it was?

Blackhead. It was about two Months ago.

Biſhop of R. I have, indeed, my Lords, ſome obſcure Remembrance, that ſome Years ago, there was one writ to me out of *Newgate*, under the Name of *Robert Young*, pretending to be a Clergyman; and I recal ſomething of the Contents of his Letter. It was to tell me, That he and his Wife lay in Priſon there upon a falſe Accuſation, of which he hop'd they ſhould be ſpeedily clear'd. In the mean Time, he deſired me to recollect, that he had officiated ſome Weeks for the Chaplain at *Bromley-College*, and had preached once or twice in the Pariſh-Church there. He intreated me to give him a Certificate of this, becauſe it would ſtand him in much Stead, in order to his Juſtification: And withal, that I would ſend him ſomething out of my Charity, for his and his Wife's Relief in their great Diſtreſs.

This, my Lords, I dare ſay, was the whole Subſtance of that Letter; and this was two or three Years ago at leaſt.

To that Letter I am ſure I made no Reply in Writing. Only, having not the leaſt Remembrance of him myſelf, I enquired in the Neighbourhood, and among the Widows in the College; intending to have ſent him ſome Alms ſuitable to his Condition and mine, had I found him worthy.

But upon Enquiry, I received from all Hands ſo very ill a Character both of this *Young* and his Wife, that I reſolv'd to give him no Anſwer at all; and I have never heard any thing more of him to this Day.

But now, I beſeech your Lordſhips, to give me Leave to ſpeak to this Perſon myſelf: And they intimating I ſhould do as I thought beſt, I ſaid to him;

I conjure you, in the Preſence of theſe Noble Lords, and eſpecially of the Great LORD of Heaven and Earth, that you will declare the Truth of what I am going to aſk you.

When you came to my Houſe at *Bromley*, upon a Faſt-Day it was, I think the firſt Faſt of this Year; Did not you deſire to ſpeak with me, as having a Letter for me? When I came to you into my Hall, Did not you firſt kneel down, and aſk me Bleſſing? Did you not then deliver me a Letter, affirming it was from a Country Miniſter, a Doctor of Divinity? Did not you tell me, You were his Servant, or Bailiff? And that your Maſter had ſent you on purpoſe, many Miles, to receive an Anſwer yourſelf to that Letter from my own Hand?

Blackhead. I never brought a Letter to the Biſhop of *Rocheſter* from a Country Miniſter; I know no ſuch Doctor of Divinity; Nor ever was Servant to any; I only brought a Letter to the Biſhop from Mr. *Young*.

Biſhop of R. My Lords, what I ſay is moſt certainly true. This Man had never any other Buſineſs with me, but in relation to that Letter, pretended by him (for now I find it was but a Pretence) to be written to me by an eminent Country Divine in *Buckinghamſhire*, a Perſon of a conſiderable Eſtate, as he told me. My Lords, I cannot yet call to Mind the Doctor's Name; but the Buſineſs of the Letter I am in great Part Maſter of, and it was to this Purpoſe:

That there was a Perſon, (naming him,) who had apply'd to him to be his Curate; but that he had Reaſon to ſuſpect he had counterfeited my Hand and Seal for Holy Orders: Therefore he deſired me to ſend him Word under my own Hand by the Bearer, his Man, whether I had Ordain'd ſuch a One, in ſuch or ſuch Years; That if I had, he would encourage and entertain him; if not, he would take care he ſhould be puniſh'd for his Forgery.

Now, my Lords, upon the Receipt of ſo friendly a Letter by this very Meſſenger, I bid him ſtay a little, and I would give his Maſter Satisfaction out of my Books, whether I had Ordain'd any Man of that Name; which I thought I had not. Accordingly, my Secretary, and I, did ſeverally turn over all my Papers relating to ſuch Affairs, as carefully as we could; and finding no ſuch Man's Name in them; in which we could not be eaſily deceiv'd, becauſe I keep methodically (as, no doubt, every Biſhop does) all Recommendations, Subſcriptions, Teſtimonials, and Titles of thoſe I admit into Orders; I wrote the ſuppoſed Author of the Letter as civil an Anſwer as he ſeemed to deſerve.

That I was extremely pleaſed, and thankful, that a mere Stranger to me ſhould be ſo careful of my Reputation: That my Secretary, and I, had diligently examin'd all the Books where ſuch Things are recorded: And I could aſſure him, I never had Ordain'd any ſuch Perſon either Prieſt or Deacon, within the Space limited in his Letter, or at any other Time: That I ſhould look upon it as a ſignal Service done to the Church in general, and a ſpecial Favour to me in particular, if he would, as he promiſed, cauſe the Counterfeit to be apprehended, ſo that the Courſe of Law might paſs upon him.

This Letter, my Lords, all written with my own Hand, I deliver'd to the Perſon here preſent: And he went away with it, aſking me Bleſſing again upon his Knees, and promiſing I ſhould ſpeedily be made acquainted with the Succeſs.

Earl of Devonſhire. I pray, my Lord, how was the Letter ſuperſcrib'd you ſent back by this Man?

Biſhop of R. My Lord, it was to the ſame Perſon, with the ſame Superſcription as he ſubſcrib'd himſelf, and directed to the ſame Place, where he ſaid he was Miniſter; tho' the Name of Place or Miniſter I cannot yet recover. But let that Letter of mine be produced, and it will put an End to this whole Controverſy.

Blackhead. The Letter I received from the Biſhop, was ſuperſcrib'd to Mr. *Young*, and to no other.

Biſhop of R. My Lords, this is a horrid Falſehood. I well remember now, this Fellow was at my Houſe a ſecond Time, ſome Weeks after the firſt. When he came, I was in the Garden with ſome Gentlemen, my Neighbours; where, firſt aſking me Bleſſing, he told me, His Maſter, the Doctor had taken up the Perſon who had forg'd my Orders: That the Man ſtood upon his Vindication; but that his Maſter was bringing him up to *London*; and then I ſhould hear farther from him: Adding, That his Maſter was a Man of ſuch a Spirit, and ſuch a plentiful Eſtate, that whenever he ſuſpected a Man to be a Rogue, or a Cheat, he would ſpare no Pains to diſcover him, nor think any Coſt too much to get him puniſh'd. Theſe, my Lords, I well remember, were the Knave's very Words: And I hope your Lordſhips will likewiſe deal with him in the ſame Manner. I took this ſecond Meſſage ſtill more kindly, and order'd my Servants to entertain the Meſſenger very civilly.

Blackhead. I brought no ſuch Meſſage. All my Buſineſs with the Biſhop was from Mr. *Young*, which I ſuppoſe was of another Nature.

Biſhop of R. What I ſay is ſo true, that I am confident ſeveral of my Servants do remember the Particulars. For this Man ſtuck not to declare his Buſineſs before them all; very much magnifying his Maſter, and his Houſe-keeping, and vapouring what an Example he would make of the counterfeit Prieſt, without putting me to any Trouble or Expence.

Earl of Devonſhire. Has your Lordſhip none of thoſe Servants near at Hand?

Biſhop of R. My Lord, ſome of them are in Town; and one, my Secretary, Mr. *Moore*, by an accidental good Fortune, came hither with me: He was without when I was call'd in. I doubt not but he will ſatisfy your Lordſhips what was this Man's Errand to me: He is a young Man of great Honeſty, and, I believe, would not tell a Lye to ſave my Life: I am ſure I would not have him.

Whilſt they were calling in Mr. *Moore*, *I added*; My Lords, I appeal to the great God of Heaven to judge between me and this Wretch, touching the Truth or Falſhood of what we ſay, and to deal with us both accordingly at the laſt Day of Judgment: And I dare alſo appeal to your Lordſhips to judge between us by what appears to you: For did you ever ſee greater Villainy, and Conſciouſneſs of Guilt in any Man's Countenance than in his?

By this Time, Mr. *Moore* being come in, *I ſaid*, *Moore*, Apply yourſelf to my Lord *Nottingham*. I charge you, do not, for any Conſideration of me, ſpeak any Thing which you cannot juſtify for Truth.

Earl of N. Mr. *Moore*, Do you know that Perſon there? (*Pointing to* Blackhead.)

Mr. Moore. My Lord, I do know him ſo far, that I have ſeen him once or twice at my Lord's Houſe at *Bromley*.

Earl of N. What Buſineſs had he at *Bromley?*

Mr. M. The firſt Time he brought a Letter to my Lord.

Earl of N. From whom?

Mr. M. My Lord, it was from a Country Miniſter in *Buckinghamſhire*, a Doctor of Divinity, as he wrote himſelf; his Name was *Hooke*.

Biſhop of R. My Lords, I now very well remember that was the Name, *Hooke*, or ſomething very near it. There may be the Difference of a Letter: I will not ſtand upon that, or can it be expected I, or my Servant, ſhould be poſitive as to every Letter of a Name, in ſo ſudden a Queſtion.

Earl of N. Mr. *Moore*, What was the Buſineſs of that Letter?

Mr. M. My Lord, it was concerning one that offered himſelf to be the Doctor's Curate, whom he ſuſpected to have counterfeited my Lord's Letters of Orders. The Doctor deſired my Lord to look into his Books, whether he had Ordain'd any ſuch Perſon. My Lord and I did thereupon ſearch all the Places where the Memorials of ſuch Affairs are kept, and we found no ſuch Name; and ſo my Lord himſelf wrote back to the Doctor, by this very Man that ſtands here.

Earl of N. Mr. *Moore*, Will you take your Oath of all this?

Mr. M. I am ready to take my Oath of it, if you pleaſe to give it me.

Earl of N. What ſay you, *Blackhead?* You ſee here is a young Man, the Biſhop's Secretary, comes in by Chance, and confirms punctually what the Biſhop had ſaid before, concerning your Meſſage to his Lord; and he offers to take his Oath of it. If you did bring a Letter from one Dr. *Hooke*, Why do you not confeſs it? It can do you no Hurt.

Blackhead. I know of no ſuch Divine as Dr. *Hooke*; nor any thing concerning one that counterfeited the Biſhop's Orders. The Letter I brought was from Mr. *Young*.

Mr. M. My Lord, this Fellow cannot but know, that what he ſays is ſhamefully falſe; I aſſure you, I have the Original Letter at Home to produce; and doubt not but divers of my Lord's Servants remember him, and his Buſineſs, as well as I do: For he was a ſecond Time at *Bromley*, ſome Weeks after.

Earl of N. What was his Buſineſs then?

Mr. M. He ſaid, he came to acquaint my Lord, that his Maſter, Dr. *Hooke*, had ſeized on the Perſon who had forg'd his Orders. My Lord aſk'd him, Whether he had alſo ſeiz'd the Falſe Inſtrument? And if he had, deſired it might be tranſmitted to him. This Man anſwered, He believed his Maſter had got it: That he was coming up to *London*, and bringing the Cheat with him; and had been there ſooner, had he not ſprain'd, or hurt his Leg: But when he was come, the Doctor would give my Lord Notice, or himſelf wait upon him. My Lord was much pleaſed with this ſecond Meſſage, and gave Orders to have the Bringer of it well uſed. He was ſo; and freely diſcourſed with the Butler, and the other Servants, touching his Buſineſs there. So that I am verily perſuaded ſeveral of them remember all theſe Circumſtances of it, and perhaps more than I do.

Upon this, *Blackhead* being again urg'd by the Lords with ſo plain a Teſtimony, perfectly agreeing with what I had ſaid, and he ſtill perſevering obſtinately to deny every Part of it; I, and Mr. *Moore* were ordered to withdraw, *Blackhead* ſtaying behind.

As I was going out, *I ſaid*, My Lords, I cannot comprehend to what Purpoſe this Fellow perſiſts in this Lye; I am ſure he can never prove that I have injured the Government in Word, or Deed, or Writing. Then I could not but again obſerve to the Lords, what viſible Marks of Falſhood and Treachery there were in *Blackhead*'s Face: For, indeed, all the while he look'd as if he would have ſunk into the Ground; tho', as I was told afterwards, before I came into the Room, he had appear'd very briſk, and bold, and full of Talk. But, upon my firſt coming in, his Complexion, which was naturally very ſallow, turn'd much paler and darker; and he was almoſt ſpeechleſs, ſaying nothing to any Purpoſe, more than what he thought was neceſſary to keep him from the main Lye, *That he had brought me a Letter from one* Young, *and no other*.

But after my being withdrawn about Half an Hour, I was called in again, and *Blackhead* ſent forth.

Earl of N. Now, my Lord, the Buſineſs is out, the Fellow has confeſs'd he brought the Letter to you, written not in the name of *Young*, but as from one Dr. *Hookes*; *Hookes* was the Name, not *Hooke*: Your Lordſhip was in the right, in ſaying, you would not ſtand upon a Letter.

Biſhop of R. My Lords, I could not truſt my Memory ſo far as to a Letter: But one Thing I was ſure of, That was the only Letter this Raſcal ever brought me; and it was not from any whoſe Name was *Young*.

Earl of N. Well, that Buſineſs is over, he has confeſs'd it; and now, my Lord, Pray take a Chair, and ſit down.

Earl of Devon. Pray, my Lord, ſit down.

Biſhop of R. No, my Lords, I deſire you to excuſe me.

Earl of N. My Lord, we have ſome few Queſtions to aſk you, and therefore pray repoſe yourſelf.

Biſhop of R. If you pleaſe to permit me, I had rather anſwer what your Lordſhips have farther to ſay, ſtanding thus as I am at the Table.

Earl of N. Then, my Lord, we ſhall ask you, Have you ever written to the Earl of *Marlborough* within theſe three Months?

Biſhop of R. I think I may ſafely affirm, I never writ to my Lord *Marlborough* in my Life: But I am certain, and upon the Faith of a Biſhop, I declare, I have not written one Word to him theſe three Months.

E. of N. Have you received any Letter from my Lord *Marlborough* within theſe three Months?

Biſhop of R. I proteſt ſolemnly, I have not received any.

E. of N. Have you received any written or printed Papers from my Lord of *Marlborough* within that Space of Time?

Biſhop of R. As in the preſence of GOD, I declare, I have not. My Lords, I have had ſome Acquaintance with my Lord *Marlborough*, both in King *James*'s Court, and in the Parliaments ſince; but I cannot call to mind that ever I wrote to him, or he to me.

E. of N. Then I think, my Lords, we have nothing more to do, but to wiſh my Lord Biſhop a good Journey to *Bromley*.

With that they all roſe up, and ſaluted me, teſtifying their great Satisfaction that I had ſo well cleared myſelf, and confounded my Adverſary. More eſpecially Two Noble Lords of the Company, to whom, I ſaid, I would now particularly appeal, gave me an ample Teſtimony of their Belief of my Innocency in this Accuſation, and of my dutiful Diſpoſition to the Government.

My Lord *Nottingham* then told me, in the Name of all the reſt, *They had no further Trouble to give me.* I intreated them to ſuffer me to add a few Words: They permitting me, *I ſaid*,

My Lords, I heartily thank you for confronting me with this Fellow; elſe I could not ſo well have made out my Innocency; but I might ſtill have lain under a Suſpicion, whereof I had not known the leaſt Ground. Had this been a Trial for my Life, I ſhould have been glad to have ſuch Honourable Perſons for my Judges. But now I have much more Reaſon to bleſs GOD, that you have been my Compurgators: That you are Witneſſes, as well as Judges, of the Detection of this Villainy againſt me; whereof, I muſt acknowledge, as yet, I do not fathom the Bottom. Wherefore I muſt intreat, That I may put myſelf under your Protection for the future. For altho' this Fountain of Wickedneſs has been now ſtopped in this Particular, as to myſelf, yet it ſeems to run under Ground ſtill: And unleſs ſpecial Care be taken, it may break forth again in ſome other Place, on ſome other Occaſion, to the Ruin, if not of me, yet of ſome other innocent Perſon.

Earl of Devon. No, my Lord: You need never fear this Fountain can break forth any more, to do you, or any other good Man, any Prejudice; he having been ſo palpably convicted of Knavery and Lying.

Biſhop of R. My Lords, I hope ſo: As for myſelf, I take my own Innocency to be abundantly vindicated by this your general Declaration in my Favour. I make no Queſtion but your Lordſhips will next vindicate yourſelves, and the Juſtice of the Government, by bringing this wicked Man to condign Puniſhment, and by examining the main Drift of his Deſign, and who have been his Accomplices.

They all aſſuring me I might rely upon them for it, I withdrew.

All this while I had not the leaſt Conjecture, or Imagination, who this *Young* ſhould be, with whom *Blackhead* pretended I held ſo cloſe a Correſpondence.

But my next Appearance before the *Committee of the Council*, will clear up what remains of the whole wicked Myſtery.

In the mean Time, returning Home that Evening to *Bromley*, I preſently met with a plentiful Concurrence of Evidence from moſt of my Servants, of their Diſcourſe with *Blackhead*, and their Knowledge of his Buſineſs, in reference to Dr. *Hookes*'s Letter.

Firſt, The Butler, *Thomas Warren*, told me, That according to my Order to uſe him kindly, he had done ſo both Times he was with us. Particularly the ſecond Time, he had entertained him with one of the Petty Canons of *Windſor*, who came thither by Chance, in the Parlour next the Garden: That thence he brought him down into the Cellar, where *Blackhead* drank my Health with Knees almoſt bended to the Ground: That then he earneſtly deſired him to ſhew him my Study; *ſaying*, I have heard your Lord has a very good Study of Books: My Maſter *Hookes* has a very good one; he often lets me go into it, and I doubt not but you have the ſame Liberty. I pray let me ſee his Books. *The Buttler anſwer'd*, My Lord has but few Books here, only ſuch as he brings from Time to Time from *Weſtminſter* for preſent Uſe, and they are lock'd up in Preſſes, ſo that I cannot ſhew them if I would. I pray then, ſaid *Blackhead*, let me ſee the Room, I hear it is a very fine one. *The Butler ſaid*, He could not preſume to do it without my Leave. Then, ſaid *Blackhead*, let me ſee the reſt of the Houſe. The Butler excuſed his not being able to do it then, becauſe there were ſome Ladies with his Miſtreſs. The ſame Requeſt, he aſſured me, *Blackhead* repeated almoſt twenty times; but ſtill he deny'd him.

Then *Thomas Philips*, my Coachman, and *John Jewel*, my Gardener, confirmed moſt of what the Butler had ſaid; all of them agreeing, that both the Times he was at *Bromley*, eſpecially the ſecond, he had talked publickly with them of the Buſineſs he came about from his Maſter Dr. *Hookes*; enlarging much in Commendation of the ſaid Doctor, what a worthy Man he was; what Hoſpitality he kept; and how he would never reſt, till he had brought to Puniſhment the Knave that had forged my Hand and Seal for Orders. *They added*, That after I had diſmiſs'd him, he linger'd about in the Garden, the Hall, and the great Parlour, a long Time; and was full of ſuch Diſcourſes.

Moreover, the Gardener, and *William Hardy*, the Groom, and *Thomas French*, and one or two of the other Servants, who remained at *Bromley* whilſt I was in Cuſtody at *Weſtminſter*, did all aſſure me, that this Man, who brought firſt the Letter, and then the Meſſage, from Dr. *Hookes*, had been a third time at my Houſe, whilſt I was under Confinement. That it was upon a *Sunday*, which by Computation proved to be *Whitſunday*, *May* the 15th: That they found him in the midſt of the Houſe before they knew he was entered. *He told them*, That paſſing that Way, he came to condole for my Miſhap, and to inquire what the Matter was; hoping it was not ſo bad as was reported at *London*. *They anſwer'd*, They knew nothing of Particulars; yet doubted not but I was Innocent. That he then again deſired to ſee the Houſe; but all the Doors were locked, except the great Parlour, which has no Lock upon it. That he would have enticed them to Town to drink with him, which they refuſed, but made him drink there; and he coming after Dinner, they perſuaded a Maid-Servant to provide him ſome Meat; which ſhe did, but unwillingly, telling them, *She did not like the Fellow's Looks*; that perhaps he might come to rob, or ſet the Houſe, now ſo few Servants were at Home: That he rather looked (as indeed he did) like ſome knaviſh, broken Tradeſman, than an honeſt, rich Clergyman's Bailiff, or Steward (as he alſo call'd himſelf); and it has proved ſince, that her Conjecture was true.

All this, and more, my Servants repeated to me, touching *Blackhead*'s Behaviour in my Houſe, and his Diſcourſe concerning his Maſter, Doctor *Hookes*; and they offered to depoſe it all upon Oath. And, above all, the next Day, being *Saturday*, *June* the 11th, Mr. *Moore* coming from *London*, immediately found the Original Letter that *Blackhead* had brought me from the pretended Doctor.

Wherefore, being furniſhed with all theſe freſh Materials, eſpecially with the Letter itſelf, and being not a little ſurprized to hear that the Rogue had, the ſecond Time of his coming, been ſo earneſt to get into my Study, or any of the other Rooms; and that he had the *Diabolical Malice* againſt me, to come to my Houſe a third Time, on Pretence of condoling my Misfortune, which I then thought, it was probable, had chiefly proceeded from his malicious Perjury againſt me: All this conſider'd, I reſolved to go to *London* on *Monday* Morning with theſe Servants, and to carry the Letter that he brought me as from Dr. *Hookes*, to lay the whole Buſineſs before the Lords of the Committee, and to deſire their farther Examination of *Blackhead* upon theſe Particulars.

Accordingly, on *Monday*, *June* the 13th, I went, and attended the Meeting of the Lords that Morning in the uſual Place. When there was a full Committee, I ſent to them by a Clerk of the Council, intreating that I might have a ſhort Audience. After ſome Time, I was introduced: There were preſent (beſides moſt of the Lords before-mentioned) three others, whom I had not ſeen there ſince my firſt Appearance before them, the Marquis of *Carmarthen*, Lord Preſident; the Lord *Godolphin*, and Sir *John Lowther*.

When I came into the Room, and was juſt going to propoſe the Buſineſs that brought me thither, my Lord *Nottingham* prevented me, and ſaid,

My Lord, Do you know that Perſon there? Pointing to a Man, who ſtood behind the Privy Counſellors, near the Door which leads into the publick Room.

Biſhop of R. My Lord, I do not know him.

Earl of N. My Lord, I pray obſerve him well.

Biſhop of R. Upon my Credit, I never ſaw this Man before in my Life, to the utmoſt of my Knowledge.

Then the Perſon ſtanding there, looked boldly upon me, *and ſaid*, Do you not know me, my Lord? Do not you remember, that I officiated ſome Weeks at *Bromley-College*, for Mr. *Dobſon*, in King *James*'s Time? And that I preached in the Pariſh Church there once or twice?

Biſhop of R. My Lords, I ſolemnly affirm, I do not know this Man: I never ſaw him before: I never knew that he officiated in *Bromley-College*: I never heard him preach in the Church there: He is a mere Stranger to me: He may have ſerved for the Chaplain of that College in King *James*'s Time; but I was not then concerned who officiated there. He may have preached in the Church, and I not have heard him; for about that Time I was Clerk of the Cloſet, and was ſeldom or never at *Bromley* on *Sundays*, by reaſon of my Attendance on the Princeſs *Anne* of *Denmark*, either at *Whitehall*, or *Windſor*, or *Hampton-Court*, or *Richmond*.

The ſame Perſon preſently took me up, with inſolent Confidence, You will know me better when Captain *Lawe* appears: I warrant you don't know Capt. *Lawe* neither.

Biſhop of R. My Lords, if any of your Lordſhips pleaſe to ask me any Thing, I ſhall anſwer with all Reſpect. But I do not underſtand that I am bound to ſatisfy this ſaucy Fellow's Queſtions: Yet, becauſe he has ask'd me ſo familiarly, touching my Acquaintance with one Captain *Lawe*, I aſſure you, I know not any ſuch Man in the World as Captain *Lawe*.

But, my Lords, by this Perſon's Diſcourſe, I am induced to believe, he may be the *Young*, with whom the other Knave *Blackhead* pretended the laſt Time that I held a ſtrict Correſpondence by his Means.

E. of N. This Man's Name is *Young*, *Robert Young*.

Biſhop of R. Then, my Lords, becauſe my Lord Preſident, and ſome of the other Lords, were not here then, I muſt beg Leave of thoſe that were, that I may repeat what I then remembered, concerning one *Robert Young*. Whereupon I recollected the Subſtance of what I had ſaid, of a Letter I had received ſome Years ſince, dated at *Newgate*, from one of the ſame Name, who pretended himſelf to be a Clergyman.

I added, It ſeems, my Lords, by his own Confeſſion, this is the very ſame *Young*. But, as I never ſaw him before he was in *Newgate*, ſo I declare, upon the Faith of a Chriſtian, I never ſaw or heard from him ſince that Letter: However, I am very glad you have him now: I make no doubt but he will be found, in the End, ſuch another Villain as *Blackhead* was proved to be on *Friday* laſt *.

But,

* *Stephen Blackhead* was a Priſoner in *Newgate*, and convicted, *Jan.* 15, 1689, to ſtand in the Pillory, and to loſe his Ears, and be impriſoned for a Year, for Forgery; but got his Sentence remitted.

Young, who alſo went by the Names of *Brown*, *Smith*, *Hutt*, *Jones*, *Green*, &c. in *Dublin* was called *Marſh*, and in *Raphoe*, *Hopkins*, forged the Archbiſhop of *Caſhell*'s, the Biſhop of *Waterford*'s, and ſeveral Clergymen's Hands, to Teſtimonials of his Morals and Learning; whereby he got Deacon's Orders from the Biſhop of *Killaloo*. He afterwards run away with a Horſe from *Tallogh*; and at *Caſtle Reah*, fled for getting a Baſtard; and at *Cavan*, was impriſon'd for having two Wives, and there was degraded by the Biſhop of *Kilmore*, fearing he might be hang'd in his Gown. Afterwards he came to *England*, and produced counterfeit Orders from the Biſhop of *Clogher* to Archbiſhop *Sancroft*, begging Preferment, as a diſtreſſed *Iriſh* Clergyman. After this, he ſent a Woman, (whom he call'd his Wife) by the Name of *Mary Green*, to the King, at *Windſor*, pretending that her Huſband was taken Captive by the Pirates of *Sallee*, therefore pray'd the King would recommend her to the Clergy of *England*: This

But, my Lords, ſaid I, the Buſineſs that brought me to wait on you now, is to intreat you to take that ſame *Blackhead* into further Examination, and to enquire a little more into his Part in this wicked Contrivance, whatever it is.

My Lords, ſince I went to *Bromley*, my Servant, Mr. *Moore*, has had the good Fortune to retrieve the very Original Letter that *Blackhead* brought me from his counterfeit Maſter, Doctor *Hookes*. Then I deliver'd the Letter at the Table, and my Lord *Nottingham* read it aloud. And to ſhew with what a treacherous Inſinuation, and Plauſibility of Style it was written, to draw from me an Anſwer under my own Hand, I here ſet down the very Letter itſelf, Word for Word.

My Lord,

BEing deſtitute of a Curate, one Mr. *James Curtis* came to me, who produced Letters Dimiſſory (bearing Date, *March* 13th, 1691), and likewiſe Letters of Orders under your Hand, and Eſpiſcopal Seal. Now, my Lord, willing I am to employ any that your Lordſhip ſhall recommend, and give him all the Encouragement imaginable; but being ſince, by his own Words, ſuſpicious that his Inſtruments are forg'd, I have therefore on Purpoſe ſent my Man to know the Truth thereof; and in order thereunto, I humbly beg your Lordſhip to give an Account in yours by this Bearer, promiſing, for the Church of *England*'s Credit, and likewiſe your Lordſhip's Honour, that, if he be an Impoſtor, I will ſee him brought to condign Puniſhment for ſuch his Forgery; but if he be not, I beg your Lordſhip's Pardon for this Trouble, occaſion'd by my candid Affection for your Lordſhip, and all Clergymen, being not willing to have them impos'd upon.

I am you Lordſhip's
Moſt Obedient Servant,
Robert Hookes, D. D.

Windgrave,
April 6, --92.

Now, my Lords, I thought it would be for your Service to acquaint you, That I have received, from divers of my Servants, a farther Account of all *Blackhead*'s Demeanor, the firſt, ſecond, and third Time he was at my Houſe at *Bromley*; for he was there a third Time alſo, which I knew not of before I went Home on *Friday*.

Then I ſumm'd up what has been ſaid before, my Servants were ready to depoſe to that Purpoſe: Concluding thus, My Lords, my Servants are attending without; I pray that *Blackhead* may be brought before them Face to Face, and that they may be admitted to give in upon Oath what they have to ſay concerning him.

Upon this, ſeveral of the Lords ſaid, Send for *Blackhead*; and he was ſent for.

But before he came, they call'd in Mrs. *Young*, the Wife, it ſeems, of the aforeſaid *Robert Young*; but what a kind of Wife, and which of the two Wives he had at one and the ſame Time, will appear in what follows.

When ſhe was come in, my Lord *Nottingham* ſaid to her, *Mary Young*, Whence received you this Paper? Taking up a Paper that lay upon the Table.---*Mary Young*. I had it from Captain *Lawe*.

E. of N. What did he ſay, when he gave it you?

Mrs. Young. He bid me deliver it to my Huſband.

E. of N. What did he ſay it was?

Mrs. Young. He ſaid it was a *Sociate*, or ſome ſuch Word.

E. of N. What! Did he deliver you a Paper of this treaſonable Nature, in the Manner as it is, to be given to your Huſband, without ſealing it up, or incloſing it in another Paper?

Mrs. Young. Yes, my Lord, he did.

E. of N. Did he tell you any of the Names to it?

Mrs. Young. Yes; he ſaid, there were the late Archbiſhop of *Canterbury*'s, the Biſhop of *Rocheſter*'s, and ſome other Lords Names to it.

E. of N. What paſs'd afterwards between you about it?

Mrs. Young. I gave it my Huſband; and when Captain *Lawe* came for it again, my Huſband ſaid, No, theſe Lords, whoſe Names are ſubſcribed, have not been ſo liberal in their Relief of my Wants as formerly; and therefore I will make another Uſe of this Paper: And ſo lock'd it up.

By this Time *Blackhead* was brought in, and the Woman order'd to withdraw, and to be kept by herſelf.

E. of N. *Blackhead*, the laſt Time you confeſs'd you brought the Biſhop of *Rocheſter* a Letter from *Robert Young*, under the falſe Name of Doctor *Hookes*.---*Blackhead*. Yes, I did.

E. of N. Can you know that Letter when you ſee it?

Blackhead. I cannot tell; I doubt I cannot know it.

E. of N. Here it is; (and it was given into his Hand); Is that the ſame Letter you deliver'd the Biſhop?---*Blackhead*. I am not ſure it is.

E. of N. Conſider it well; look on the Superſcription, you cannot but remember that. You began to be ſomewhat ingenuous laſt *Friday*; if you relapſe, it will fare the worſe with you.

Blackhead. Yes, this may be the Letter; this is the very ſame Letter.

E. of N. And you received an Anſwer to this from the Biſhop for Doctor *Hookes*, which you carried to *Robert Young?*

Blackhead. Yes, I did; I own it.

E. of N. But, What made you, when you were at *Bromley* the ſecond Time, ſo earneſtly to deſire of the Biſhop's Butler, and his other Servants, that you might ſee the Rooms in the Houſe, eſpecially his Study?

Blackhead. No, I do not remember that I deſired to ſee the Study: The Houſe I might, out of Curioſity.

E. of N. But here are ſome of the Biſhop's Servants without, who are ready to ſwear, that you preſs'd very often to get a Sight of his Study; ſaying, you had the Freedom at your Maſter *Hookes* to ſhew any Stranger his Books, and you doubted not but the Butler could do the ſame there.

Blackhead. I cannot deny that I did deſire to ſee the Biſhop's Study: The other Rooms I am ſure I did.

E. of N. What Reaſon had you to be ſo importunate to ſee that, or any of the other Rooms? Had you any Paper about you, that you deſign'd to drop, or leave in any Part of the Biſhop's Houſe?

Here *Blackhead* ſtopp'd, as very loath to out with it; 'till divers of the Lords urg'd him to tell the Truth. At laſt he went on, though with much Heſitancy.

Blackhead. Yes, I muſt confeſs I had a Paper in my Pocket, which I deſign'd to put ſomewhere in the Houſe.

E. of N. What did you with it?

Blackhead. I did leave it in the Parlour next the Kitchen.

E. of N. In what Part of the Parlour?

Blackhead. In the Flower-Pot in the Chimney.

Good Lord bleſs me, *cried I*, I ſeriouſly proteſt, I never heard that any Paper was found there by my Servants. To be ſure they would have brought it me.

E. of N. But, my Lord, it will be worth your while to ſend preſently to *Bromley*, to ſee whether there be any Paper ſtill, and what it is.

Biſhop of R. My Lord, I will ſend one away immediately. Only my Servants are without, expecting to be ſworn. Be pleaſed firſt to call them in, and diſpatch them.

E. of N. Nay, my Lord, there is no need of their Teſtimony now, for this Fellow has ſaid already more than they know. He has confeſs'd, not only that he deſired to ſee your Houſe, and particularly your Study, but that he did it with Intention to leave a Paper ſomewhere in it; and that he did leave one in your Parlour, and in the Flower-Pot of the Chimney.

Bp. of R. Then, my Lord, I will ſend away forthwith.

E. of N. Stay, my Lord, let us firſt examine him a little farther. *Blackhead*, What Paper was it you left in the Biſhop's Chimney in the Flower-Pot?---*Blackhead*. It was the Aſſociation.

E. of N. Was it this Paper here? Shewing the Aſſociation that lay upon the Table.---*Blackhead*. Yes, it was.

E. of N. How came you by it? And who adviſed you to lodge it there?

Blackhead. I had it from Mr. *Young*, and he adviſed me to leave it in the Biſhop's Houſe, as I did.

E. of N. Did *Young* direct you to put it into the Flower-Pot in the Parlour?

Blackhead. Yes, he did; and I put it there accordingly in the Flower-Pot.

E. of N. But were not you a third Time at the Biſhop's Houſe? It was upon a *Sunday*, which it ſeems was *Whitſunday*.---*Blackhead*. I was.

E. of N. You pretended to condole for the Biſhop's Impriſonment: It is manifeſt that could not be your Buſineſs. What was it?

Blackhead. I was deſired by Mr. *Young*, ſeeing the Aſſociation was not found by thoſe who apprehended the Biſhop, to go to *Bromley*, and try to recover it, that being the Original. I did ſo; I came into the Houſe before any of the Servants were aware, I went into the Parlour unſeen, and took the Paper out of the ſame Place where I had put it, and deliver'd it again to Mr. *Young*.

Bp. of R. My Lords, I am very much ſurprized at all this. I cannot but admire the wonderful Goodneſs of God in this my extraordinary Deliverance. It appears by what this Fellow confeſſes, that this forged Aſſociation was in my Houſe, in a Flower-Pot, for many Days together: and that it was there at the very Time I was ſeized on by your Lordſhips Order. For he ſays he put it there the ſecond Time he was at *Bromley*, which was a pretty while before I was in Hold; and took it not out 'till the third Time, which was upon *Whitſunday*, the Ninth Day after I was under Confinement. And by a ſtrange and marvellous Providence, that Parlour, where he ſays it lay ſo long in the Chimney, was never ſearch'd or enquired after by the Clerk of the Council, or the Meſſenger.

The other Part of the Houſe, on the Left-Hand of the Hall, where my Study is, and Bed-Chamber above Stairs, and a Parlour and Drawing-Room below; all theſe they ſearched very accurately. Particularly, I well remember the Meſſenger thruſt his Hand into the Flower-Pots in every Chimney: Which ſeemed very odd to me then: But I now underſtand the Meaning of it.

At this, my Lord *Sidney*, my Lord *Nottingham*, my Lord *Devonſhire*, and ſome others of the Council, affirm'd, That they perfectly remember'd, both *Backhead*, and *Young*, did eſpecially direct them to give Order to thoſe who ſhould be ſent to take me, to ſearch all the Flower-Pots.

By this Time, it was thought ſeaſonable by the Lords, to confront *Blackhead* with *Young*.

But in the mean while, the Counterfeit Aſſociation being handed about the Table, was, at length, deliver'd to me. It was to this Purpoſe, as much of it as, by a tranſient View, I could carry away in my Memory.

THAT we whoſe Names were ſubſcribed, ſhould ſolemnly promiſe in the Preſence of God, to contribute our utmoſt Aſſiſtance towards King *James*'s Recovery of his Kingdoms. That to this End, we ſhould have ready to meet him at his Landing, Thirty Thouſand Men well arm'd. That we ſhould ſeize upon the Perſon of the Princeſs of *Orange*, dead or alive; and take Care that ſome ſtrong Garriſon ſhould be forthwith deliver'd into his Hands: And furniſh him with a conſiderable Sum of Money for the Support of his Army; *or to this Senſe.*

March 20, —92.

And the forged Subſcriptions were, as I remember, after this Manner:

W. Cant.
Marleborough. *Saliſbury.* *Tho. Roffen.*
Cornbury.
Baſil Firebrace. *John Wilcoxe.*

Now upon the firſt Sight of this Paper, I preſently ſaid, I proteſt, my Lords, I am very much amazed to ſee my Hand ſo well counterfeited.

Petition being referr'd to the Archbiſhop, and the Biſhop of *London*, ſhe never came for an Anſwer to the Reference; but they forged the two Biſhops Hands, and went about the Country, cheating the King's Subjects; but being detected at *Bury*, in *Suffolk*, he and ſhe were committed to Gaol, try'd and found guilty, and ſentenc'd to ſtand in the Pillory at *Bury*, *October* 6, 1684, where he lay in Gaol about a Year, having no Money to pay his Fees. Afterwards he went and committed many Villainies at St. *Alban*'s, and other Places; and about 1688, was committed to *Newgate*, and afterwards tried, convicted, and fined, for forging Bills of Exchange, and cheating People, &c. And lying in *Newgate* ſome time, he there contrived the Aſſociation, &c. againſt the Biſhop, &c. The Lives of theſe two infamous Perſons, with the Records of their Convictions, the forged Teſtimonials, forged Bills, &c. of *Young*'s, are to be ſeen at large in the Biſhop's Account of the two Authors of this Forgery. Printed in Quarto, 1693, which he called, *The Second Part of the wicked Contrivance of* Blackhead *and* Young.

All

All the Difference is, they have done me the Favour to write it finer than I can. Otherwiſe, I acknowledge it is ſo like, that I verily believe, I myſelf, had I ſeen it in another Place, ſhould have been apt to doubt whether it were of my Writing or no. I am confident it might, upon the firſt Bluſh, deceive the beſt Friends I have.

But, my Lords, here is another innocent Perſon's Name, whoſe Hand I know very well. And I dare venture to ſay, it is even better forged than mine. I mean Archbiſhop *Sancroft*'s.

Lord Godolphin. My Lords, I am very well acquainted with Archbiſhop *Sancroft*'s Hand. And really it is here moſt exactly counterfeited.

Moreover, my Lord *Godolphin*, my Lord *Sydney*, and others, ſaid, That the Earl of *Marlborough*'s Hand had been ſo well feigned in a Letter pretended to be written to *Young* himſelf, that it was very difficult for his moſt intimate Friends to obſerve any Diſtinction. And in that Letter the Biſhop of *Rocheſter* was ſaid to have the Paper in his keeping, which appears now to have been meant of the falſe Aſſociation's being in my Cuſtody.

Nay, my Lord *Sydney* aſſured me, theſe very Impoſtors had brought him a Letter, ſuppoſed alſo to be written by me to *Young*, which being but of ordinary Matters, he thought not worth the keeping, but he well remembered the Subſcription of my Name was very like this in the Aſſociation, as well indeed it might.

By this Time, *Young* being come into the Room, my Lord *Nottingham* ſpoke to him; *Young*, look upon that Letter, (ſhewing him his own to me, under the Name of Doctor *Hookes*) Do you know that Hand?

Young. No, I don't know it.

Earl of *N*. Did not you ſend that Letter to the Biſhop of *Rocheſter* by *Blackhead*?

Young. No, I know no *Hookes*. I never writ to the Biſhop of *Rocheſter* but in my own Name, with my own Hand.

Earl of *N*. What ſay you, *Blackhead*?

Blackhead. I did receive that very Letter from Mr. *Young*'s own Hand, and delivered it to the Biſhop of *Rocheſter* with mine.

Earl of *N*. (Taking up the Aſſociation, and ſhewing it to *Young*,) Did not you give this Paper to *Blackhead*, and order him to put it into a Chimney in the Biſhop of *Rocheſter*'s Houſe, and into a Flower-Pot, if there were any?

Young. No, I never deſired him to carry it thither, or to put it into a Flower-Pot.

Earl of *N*. What ſay you, *Blackhead*?

Blackhead. Mr. *Young* did give me that Paper, and directed me to leave it in the Biſhop's Houſe; and, if I could, to put it in a Flower-Pot in ſome Room; which I did, in the Parlour.

Young. There is no ſuch Matter, I abſolutely deny it.

Upon this, the Earl of *Nottingham*, the Lord *Sydney*, and ſome others of the Councillors, aſked *Young*, Why then did you give us ſuch expreſs Directions, to ſend and ſearch the Flower-Pots, among other Places in the Biſhop's Houſe?

Young. I ſaid nothing of Flower-Pots. I bid you take Care that the Biſhop's Perſon ſhould be exactly ſearched; becauſe, when he went abroad, he carried the Aſſociation about him; when he was at home, he put it in ſome private Place, for Fear of ſurprize: Perhaps I might ſay in the Chimney.

The Lords replied, Nay, we all well remember, you particularly mentioned the Flower-Pots.

Earl of *N*. *Young*, When you perceived that the Perſons ſent to ſeize on the Biſhop had miſſed the Aſſociation, did not you then deſire *Blackhead* to go a third Time to the Biſhop's Houſe, and to take it out of the Pot, where he had laid it?---*Young*. No, I know nothing of it.

Earl of *N*. What ſay you, *Blackhead*?

Blackhead. At Mr. *Young*'s Requeſt, I went to the Biſhop's Houſe a third Time; it was upon a *Sunday*; I privately got into the Parlour, and took the Aſſociation out of the ſame Flower-Pot where I had laid it, and returned it back to Mr. *Young*.

Young. This is a Combination between the Biſhop of *Rocheſter* and *Blackhead*, to baffle the whole Diſcovery of the Plot.

Which Saying of *Young*'s could not but raiſe a general Smile among all the Company, they lifting up their Hands with great Indignation at his unparalleled Impudence.

Biſhop of *R*. I thought, my Lords, the laſt Time I was here, *Blackhead* was the moſt brazen-faced Fellow that ever I ſaw; but now I find this ſame *Young* to be a much viler Miſcreant than he. This is ſo baſe a Suggeſtion againſt me, and ſo impoſſible for me to be guilty of, and I know your Lordſhips ſo little ſuſpect it of me, that I need not make any Anſwer to it in my Defence.

Lord Preſident. *Young*, Thou art the ſtrangeſt Creature that ever I heard of: Doſt thou think we could imagine, that the Biſhop of *Rocheſter* would combine with this thy Confederate, to have an *Aſſociation* written, with his own Hand to it, and then laid in his own Houſe, in a Flower-Pot there; which, if it had been found, muſt have endangered his Life? And we ſee it was the moſt remarkable good Fortune to him that almoſt ever happened to any Man, that it was not found there.

But *Young* ſtill perſiſting, that he believed I had taken *Blackhead* off, they were both ordered to withdraw. And, I aſſure my Reader, that during this whole Examination, though *Young*'s Forgery was ſo evidently convicted by the Confeſſion of his own Companion, and Inſtrument, yet he behaved himſelf with a daring unconcerned Confidence, with a bold and erect Countenance, though it had naturally very much of a Villain in it. His whole Carriage indeed was ſuch, as became the Diſcipline he has undergone for theſe divers Years; having ſo long been almoſt a conſtant Inhabitant, together with his Wife, of many of the common Gaols in *England* and *Ireland* *.

Then the Lord Preſident called for the Letter which *Young* had ſent to me under the Name of *Hookes*. When his Lordſhip had viewed it deliberately, he aſked alſo for the *Aſſociation*, and having compared them for ſome conſiderable Time, he broke forth in theſe Words; Really, my Lords, it is a very great Providence that this Letter, ſent by *Young* under the Name of *Hookes*, to the Biſhop of *Rocheſter*, was preſerved by his Servant; for this very Letter, and the *Aſſociation*, were both apparently written by the ſame Hand; you may perceive there is no manner of Difference in the Writing, but only that the Letter is written in a leſs Hand, as Letters are wont to be, and the *Aſſociation* in a greater, as a publick Inſtrument.

At this the whole Board, one after another, had a perfect Sight of both, and all applauded the Happineſs of the Diſcovery: For it was as clear as Light to all that were preſent, that the Letters and Words of both were of the very ſame Form and Figure.

Particularly, my Lord *Godolphin* farther obſerved, and made it plain to them all, that the *W*. in *W*. *Cant*. in the Subſcription was the very ſame Letter with the *W*. in *Whereas*, which was the firſt Word of the Counterfeit *Aſſociation*.

For my Part, I could not forbear exclaiming, Great is Truth, and it will prevail!

After all this, I aſking the Lords, Whether they had any farther Service to command me? And they ſaying, No: I ſpoke theſe few Words.

My Lords, I muſt always acknowledge, that, next the Signal Providence of God, in ſo viſibly protecting an innocent Man, your Lordſhips fair and honourable Way of proceeding with me, in not ſhutting me up cloſe in the *Tower* immediately upon my firſt Accuſation, but in openly confronting me with theſe Varlets, whilſt the Matter was freſh in my Memory; and in ſo ſtrictly and impartially examining them now, has been the principal Occaſion, that my Innocency has met with a Vindication as publick and unqueſtionable, as I myſelf could have wiſhed and prayed for. But ſtill, my good Lords, I do again moſt humbly recommend to your Lordſhips, the Proſecution of this Black Contrivance to the Bottom, for the Sake of Truth and Juſtice, and for the Safety of every other honeſt Man, whoſe Lot this might have been as well as mine. I am ſure your Lordſhips all believe, that there can be no greater Service to the Government, eſpecially at this Time, than to have ſuch perjured Informers, ſo plainly diſcovered, to be ſeverely puniſhed according to their Demerits.

And ſo I took my Leave of their Lordſhips.

* "I crave Liberty to remind you what *Young* the Parſon, in Conjunction with *Blackhead*, had contrived, in order to the murdering ſeveral of the Firſt Quality in the King-
" dom, beſides divers Gentlemen of lower Degree; for theſe Fellows, judging it too little and mean for Perſons of their Tranſcendency in Villainy, merely to ſwear that ſuch
" and ſuch had conſpired to combine and reſtore, and re-eſtabliſh King *James*, they had the audacious and the unprecedented Impudence to forge an *Aſſociation*, and to counter-
" feit and affix the Hands and Names of Honourable Peers, and worthy Perſons unto it; importing, their having mutually and jointly undertook to diſpoſſeſs King *William*,
" and to bring back and re-advance King *James*. And though it was morally impoſſible, as well as altogether incredible, that had there been ſuch a Deſign, and ſo con-
" certed and ſtipulated, Wretches of the Meanneſs of *Young* and *Blackhead* ſhould have been admitted upon a Secret of ſuch Importance in itſelf, and whereof the Diſco-
" very would have rendered thoſe concerned liable to the Loſs of Life, Honour and Eſtates: Yet not only with what Eaſineſs, but Letchery, was the Belief of it enter-
" tained, by divers of our Supreme and reputed *Wiſe Miniſters*; and notwithſtanding its being in the whole Matter of it, more Ludicrous than Farce, or *Bartholomew-Fair-
" Shew*, than to be entertained by Stateſmen, yet with what Serioufneſs and Gravity was it brought to the Council-Board, and received there as a Subject worthy of weighty and
" ſolemn Debate." See a Letter to the Right Honourable Sir *John Holt*, Knight, Lord-Chief-Juſtice of the *King's Bench*, occaſioned by the Noiſe of a Plot. The Second Edition, 1694. Page 10.

And in the ſame Letter, Page 11 and 12. *The Author ſays*, Nor could the Miniſters be ſo great Strangers to the Infamous Characters of the Witneſſes, (whoſe many and notorious Crimes had ſufficiently publiſhed them before through the whole Nation as Raſcals, who had forfeited all Right to be believed and credited) as to hope to have their Integrity and Righteouſneſs juſtified in ſeizing and proſecuting any upon their Teſtimony: And yet had it not been for the miſſing of the forged Paper, when it was at firſt ſo narrowly ſearched for at the Biſhop of *Rocheſter*'s, where one of the Rogues traitorouſly and felonioufly lodged it, it is ſcarce to be conceived, how ſome of our *Stateſmen* were prepared to have puſhed on that Affair to the Impriſonment of ſeveral. But that Miſadventure, together with the Defences which the aforeſaid eloquent Biſhop, after his Apprehenſion, made at his being examined before the *Council*, rendered them more ſlow and wary in their Proceeding: And thereupon, through the gaining the Reſpite of a little Time, there was an Opportunity obtained, not only of diſcovering and laying open the many infamous and horrid Crimes, whereof the Rogues had at other times been guilty, but of fully detecting the *Forgery of the Aſſociation*, and where they had ſecretly laid it in the Biſhop's Houſe, in order to have deſtroyed him and others, in caſe it had been found by the *Clerk* of the *Council* and the *Meſſengers*, when it was ſo induſtrioufly ſought for. And, truly, my Lord, had not *Young* laboured under a ſtrange Defect of *Morals*, he was incomparably qualified in all other Reſpects to have been a ſelect, ſingular and ſtanding *Witneſs* for the *State*: For as he has a Sufficiency of Wit, and Preſence of Mind, to be able to give Things the beſt *Gloſs* and readieſt *Turn* of Thought, ſo he is furniſhed with a larger *Stock* of Impudence and Aſſurance than moſt Men in the World are: Of which your Lordſhip was an aſtoniſhed Witneſs when you had him before you at the *Bar*, to be tried for the *Forgery* which I have mentioned, and to be condemned to the too gentle and feeble Puniſhment which the Law hath ordained for it. For with what Confidence did he ſtand, not only under the Load of a Thouſand infamous Actions, of which all the Court knew him to have been guilty, but under the fulleſt and cleareſt Proof of the malicious *Forgery* for which he was then arraigned? Yea, with what *Effrontery* and Air of Impudence, to the Amazement of all there, did he continue to aſſert his own Innocence, and perſevere in his Crimination of others? But that which filleth Men moſt with Sorrow, in reference to that Tranſaction, and which keeps them under diſquieting Fears ever ſince, is, that though *Young* and *Blackhead* were Inſtruments in it, yet People of another Figure muſt have been the firſt Contrivers and Authors of it: And the handing Money to *Blackhead*, while kept in Cuſtody by *Allen* the Meſſenger, and conniving at his Eſcape from thence, gives us more than a Suſpicion of it, and little leſs than a moral Certainty: For that Rogue having been the *Tool*, employed too with *Young*, by the ſuperior Managers, and having threatened to ſqueak in caſe given up and abandoned to a publick Puniſhment, it was ſo ordered, that he might not only be permitted to get away, but be ſheltered and maintained in *Ireland*, whither he withdrew, and from whence the Government might have eaſily brought him back, were there not a Myſtery in that Affair, which it is not for ſome People's Honour to have unravelled. Nor was the Meſſenger, out of whoſe Houſe and Cuſtody he made his Eſcape, ever puniſhed for his Careleſſneſs and Neglect; but after a little Menacing and Reprimand, which was mere *Grimace*, he hath been treated all along ſince with more diſtinguiſhing Favour than fell to the Share of his Fellow-Officers. Neither durſt ſo mean and creeping Wretches as *Young* and *Blackhead*, (how impudent and malicious ſoever they are) have attacked Perſons of the Earl of *Marlborough*, and the Biſhop of *Rocheſter*'s Rank and Quality, and who had merited ſo well of the Government, and were believed at that Time to ſtand in all Terms of Fairneſs with, had they not been prompted, guided, and encouraged to it, by Perſons of Authority, Grandeur and Eminency. And had the Villains acted meerly under their own Conduct, and by the Influence of Perſonal Malice and Avarice, they would have ſingled out ſuch to be accuſed, as are held Indiſcreet, Talkative and Raſh, and with whom it might have been likely for them to have had ſome Converſation; and not Perſons of the greateſt Prudence, Circumſpection and Reſervedneſs of any in the Kingdom, and into whoſe Society it was morally impoſſible that any ſhould judge them to have been admitted, nor ſo much as into their Preſence, unleſs as Beggars and indigent Supplicants. So that this Conſpiracy, by ſuborning two infamous Raſcals, and of obtaining thereby Credit to a Plot, upon the Belief of which, ſeveral Noble, Reverend, and worthy Perſons, were to have been involved under Guilt of Ruin, may ſerve to inſtruct your Lordſhip not to be haſty and forward in giving Credit to the preſent, importunate and noiſy Clamours, and to make you extremely wary how you proceed to the Conviction and Condemnation of thoſe that are accuſed and threatened to be arraigned.

Blackhead and *Young* were afterwards tried and convicted for this Forgery; and in the Year 1700, *Young* was executed at *Tyburn* for Coining, and at the Gallows delivered the following Speech to the Reverend Mr. *Allen*, the Ordinary.

A true Copy of the Paper delivered by Robert Young *to the Reverend Mr.* Allen, *Ordinary, at* Tyburn, *on the 19th of* April, 1700.

Publiſhed by Permiſſion of Authority.

I Cannot but be very ſenſible, how juſtly I have provoked a moſt merciful and juſt God to Anger, by manifold Offences I have committed, and therefore, for the neceſſary Diſcouragement of others, who ſhall endeavour to tread in my Steps, and parallel my Forgeries; I conceived it a Duty incumbent on me, to leave to the World a true and faithful Narrative of my prevaricating Steps: But the Shortneſs of Time allotted me, being not ſufficient to furniſh ſuch a Work in, I will mention only theſe few Paſſages of my Life.

And, Firſt, I think myſelf eſpecially obliged to diſcover to the Publick, how far I was concern'd in that pretended Plot, ſuppoſed to be carried on by the Earls of *Marlborough* and *Saliſbury*, the Lord Biſhop of *Rocheſter*, and ſome others; the Truth of which, I call God to witneſs, is as follows: I was committed to *Newgate*, 'till I diſcharged a certain Fine impoſed on me; during my Confinement, one *Henry Pearſon*, a Surgeon, I think, was committed to the ſame Place for Debt, he perceiving me to be very expert in counterfeiting Hands, told me, that if I could contrive a ſham Plot, and father it upon thoſe Noble Peers, I might ſoon have Money enough to pay my Fine: Being in very low Circumſtances, I readily conſented to this Propoſal, but told him, nothing could be done in that Matter, 'till he was releaſed, which in a ſhort Time was effected. As ſoon as he was at Liberty, he employed one *Blackhead* to carry Letters between us. I happened, by a certain Stratagem, to ſee the Earl of *Marlborough*'s Hand; this I counterfeited ſo cunningly, that it was very difficult to diſcern the true from the falſe; then I drew up an Aſſociation, and affixed to it the Hands of the Earls of *Marlborough* and *Saliſbury*, as alſo Sir *Baſil Firebraſs*'s; the Lord Biſhop of *Rocheſter*'s, and the Lord *Cornbury*'s was wrote by another Hand, according to my Requeſt. And that the more Credit might be given to this pretended Plot, I wrote ſeveral Letters in the Name of the Lord *Marlborough* (for I was perfectly acquainted with his Way of Writing), ſuppoſed to be directed to me, which *Blackhead* uſed to bring me again; and yet he ſwore before the Lords of the Council, that the ſaid Earl ſent them to me; whereas, to his Knowledge, I myſelf forged them, and ordered them to be ſent after that Manner. This is the Truth of that Buſineſs, which has made ſo great a Noiſe in the World; and humbly beg the Pardon of thoſe Noble Peers, and do declare once more, in the Preſence of God, that I did not ſet the Lord Biſhop of *Rocheſter*'s, or the Lord *Cornbury*'s Hand to the ſaid Paper, yet it was done by my Conſent, by another Perſon.

And whereas I am accuſed with writing ſeveral threatening Letters to the ſaid Lord Biſhop, if he did not leave a Hundred Pounds in a certain Place; I declare, as I am a dying Man, I was not concerned in it. As for this Crime of Coining, for which I die, I declare before God, I am no otherwiſe guilty than by being a Spectator.

But though I am not guilty of this Fact, yet I muſt lay my Hand upon my Mouth, and confeſs that the Lord is righteous, and his Judgments upright, for I have injured my Neighbour ſo often by Forgeries, Cheats, *&c.* that I think it ſcarce poſſible to recount them. But that I may not totally omit them neither: In the Year 1695, I removed myſelf, by *Habeas Corpus*, from the *King's-Bench* to the *Fleet*, where I came acquainted with Mr. *Hunter*, now living in *Billiter-Lane*, Mr. *George Alliver*, alias *Block*, Mr. *Dawſon*, Mr. *Greenfield*, Mr. *Coin*, and others whom I have forgot. In the End, we concluded to cheat one Mr. *Thomas Laſenby*, of *Leeds* in *Yorkſhire*, out of Cloth, to the Value of 135*l.* which accordingly was effected, and the Cloth delivered at the *Bear-Inn* in *Baſinghall-Street*. In the Year 97, I was, by the Warden of the *Fleet*, removed back again to the *King's-Bench*, where I came acquainted with Mr. *John Carey*, *George Benſon*, and *James Roberts*, and by falſe Bills of Exchange, and forged Letters, endeavoured to cheat Mr. *Seth Loſthouſe*, a Goldſmith in *Fleet-Street*, and Mr. *Peter Block Machiels*, a Merchant in *Amſterdam*, out of 1600*l.* but that failed, though *Carey* was pilloried for it. In the aforeſaid year 97, I came acquainted likewiſe with one Mr. *John Griffin* of *Tuttle-Street*, *Weſtminſter*, and by forged Leaſes, as under one Dr. *Thomas Lamplugh*'s Hand, I have cheated Men in Town out of ſeveral Hundred Pounds by Way of Mortgages. Sir *John Johnſon*, an Alderman and Goldſmith in *Cheapſide*, ſince deceaſed, very narrowly eſcaped of being cheated out of 200*l.* by Virtue of one of the aforementioned Leaſes.

In the Year 98, the aforeſaid Perſons, and I, cheated Mr. *Azariah Reynolds*, an Undertaker in *Cheapſide*, of a Velvet Pall, two Cloaks, *&c.* by a forged Letter, as from his Correſpondent in the Country, for which I was committed to *Newgate*, and fined 200 Marks at *Guildhall*, where I received my Trial, and was convicted.

In *Newgate*, I came acquainted with *Jones*, the Evidence, whom I ſaw coin in the Debtor's Hall, ſeveral Sums of Money. How far I was concerned with him, I have already obſerved; but I forgive them, and do humbly beg God, and the Perſons I have wronged, to forgive me thoſe wicked Actions I have committed. Into thy Hands, O God, I commend my Spirit! Lord Jeſus, receive the Soul of the unhappy and miſerable

Robert Young.

This is a true Copy,
Dated *April* 20,
1700.

John Allen, Ordinary.

XLVI. *Proceedings againſt* Charles Knowles, *Eſq. (commonly called Earl of* Banbury) *for the Murder of* Philip Lawson, *Gent* *. 4 & 5 Will. & Mariæ, 1692-3.

The Indictment.

Rex *verſus* Knowles, *alias Com'* Banbury.

Hill. 4 & 5 W. & M.

Indictment for Murder againſt the E. of *Banbury*, by the Name of *Charles Knowles*, Eſq. found at *Hicks's Hall*, in *Middleſex*, and removed by *Certiorari* into the *King's Bench*, where the Defendant being arraigned thereon, he pleads Miſnomer in abatement of the Indictment, *viz.* that he is E. of *Banbury*, and ſets out the King's Letters Patent to his Anceſtors, and the Deſcents to himſelf. The Attorney General replies, That the Defendant petitioned the Houſe of Lords to be tried on this Indictment, and that thereupon it was adjudged, that he had no Right to the ſaid Earldom. To this Replication the Defendant demurrs, and the Attorney General joins in Demurrer.

Midd' ſſ. ALias ſcilt' die Mercur' ſcilt' 7 die Septembris Anno Regni Domini & Domine noſtror' Guliel' & Marie Dei Gra' Angl' &c. Regis & Regine fidei defenſor' &c. quarto ad general' ſeſſion' pacis Domini Regis & Domine Regine tent' p' adjornament' p' Com' Midd' apud Hicks'-Hall in St. John-Street in Com' pred' coram Carolo Lee Mil' Lanceloto Johnſon & al' ſociis ſuis juſtic' dictor' Domini Regis & Domine Regine ad pacem in Com' pred' conſervand' necnon ad diverſas felon' tranſgr' & al' malefacta in eodem Com' p'petrat' audiend' & terminand' aſſign' per ſacr'um duodecim jur' probor' & legalium hom' Com' pred' adtunc & ibid' jurat' & onerat' ad inquirend' p' dictis Domino Rege & Domina Regina & corpore Com' predict' preſentat' exiſtit quod Carolus Knowles, nup' de paroch' Sancti Egidii in Campis in Com' Midd' Ar' Deum pre oculis ſuis non habens ſed inſtigatione diabolica mot' & ſeduct' 6 Decembris Anno Regni Domini & Domine noſtror' Guliel' & Mariæ Dei Gra' Angl' &c. Regis & Regine fidei defenſor', &c. 4. vi & armis, &c. apud paroch' pred' in Com' pred' in & ſup' quendam Philippum Lawſon gen' in pace Dei & dict' Dom' Regis & Domine Regine nunc adtunc & ibidem exiſten' felonice voluntarie & ex malitia ſua precogitat' inſult' fecit & quod pred' Carolus Knowles cum quodam gladio Anglice *a Sword*, de ferro & chalybe confect' valor' quinq; ſolid' quem ipſe idem C. K. in manu ſua dextra adtunc & ibid' extract' habuit & tenuit p'fat' Philippum Lawſon in & ſup' ſiniſtram partem corporis ipſius P. adtunc & ibidem felonice voluntarie & ex malitia ſua precogitata p'cuſſit & pupugit dans eidem P. L. adtunc & ibidem cum gladio extract' pred' in & ſup' p'd' ſiniſtram partem corporis ipſius Philippi L. prope dict' breves coſtas ipſius P. un' vulnus mortal' Anglice *one mortal Wound* latitud' un' pollicis & profunditat' ſex polliciu' de quo quidem vulnere mortal' p'd' P. L. adtunc & ibidem inſtant' obiit. Et ſic jur' p'd' dicunt ſup' ſacr'um ſuum quod p'd' C. K. p'fat' P. L. modo & forma p'd' adtunc & ibidem felonice voluntarie & ex malicia ſua p'cogitat' interfecit & murdravit contra pacem dictor' Domini Regis & Domine Regine nunc Coron' & dignitat' ſuas, &c. Quod quidem Indictament' Dominus Rex & Domina Regina nunc Coram eis poſtea certis de cauſis venir' fecer' terminand', &c. p' quod p'cept' fuit Vic' Com' p'd' quod non omitt', &c. quin caperet eu' ſi, &c. ad reſpond', &c. Et modo ſcilt' die Martis prox' poſt Octab' Sci' Hillar' iſto eodem termino coram Domino Rege & Domina Regina apud Weſtm' ven' Carolus Comes Banbury ſub cuſtod' Will' Richardſon gen' cuſtod' Gaol' Dominor' Regis & Regine de Newgate virtute brevis Dominor' Regis & Regine de habend' corpus ad ſubjiciend', &c. ei inde direct' in cujus cuſtod' p'antea ex cauſa p'd' p' nomen Caroli Comitis Banbury al' dict' Caroli Knowles Ar' comiſs' fuit ad barr' hic duct' in propria perſona ſua. Et ſtatim de p'miſs' ei ſuperius impoſit' alloquutus qualiter ſe velit inde acquietari dicit quod ipſe eſt perſona in Indictment' p'd' mentionat' & intens' per nomen Caroli Knowles de paroch' Sancti Egidii in Campis in Com' Midd' Ar' & verſus quem Indictament' p'd' p'lat' exiſtit p' felonia & murdro predict'. Et dic' quod ipſe ad Indictament' ill' reſpondere compelli non debet quia dic' quod Dominus Carolus Primus nup' Rex Angl' &c. p' literas ſuas Patentes ſub magn' Sigillo ſuo Angl' geren' dat' apud Banbury 18 die Auguſti Anno Reg' ſui Secundo quas quidem literas Paten' ſub magno Sigillo ejuſdem nup' Regis Angl' ſigillat' p'd' C. comes B. hic in Cur' p'fert' de gra' ſua ſpeciali & ex certa ſcient' & mero motu ſuis Will' adtunc Vic' Wallingford ad ſtatu' gradu' dignitat' & honorem Comitis Banbury erexit p'fecit & creavit eidmq; Will' nomen ſtatu' ſtylu' dignitat' titulu' & honorem Comitis Banbury impoſuit dedit & prebuit p' eaſdem literas Paten'. Ac ipſum Will' eodem nomine ſtat' titulo ſtylo honor' & dignitat' Comitis per gladii cinct̃uram Cape honoris & circuli aurei impoſitionem inſignivit inveſtivit & realit' nobilitavit p'eaſdem literas paten' habend' & tenend' eadem nomen ſtatu' gradu' dignitat' ſtylu' tytulu' & honorem Comitis Banbury cum omnibus & ſingulis preheminentiis honoribus ceteriſq; hujuſmodi nomini ſtatui gradui dignitat' ſtylo titulo & honori Comitis p'tinen' ſive ſpectan' p'fat' Williel' & heredibus maſculis de corpore ſuo exeun' imp'petuum volen' &

Placitum.

* Brother to Sir *Henry Lawſon*, of *Brough*, in *Yorkſhire*, Bart.

per eaſdem literas paten' conceden' p' ſe hered' & ſucceſſoribus ſuis quod prefat' Willielmus & hered' ſui maſculi pred' nomen ſtatum gradu' titulu' & honorem pred' ſucceſſive gererent & haberent & eorum quilibet gereret & haberet & per nomen Comitis Banbury ſucceſſive vocarentur & eorum quilibet vocaretur prout per eaſdem literas paten' plenius apparet virtute quarum quidem literar' paten' pred' Willielmus fuit Comes Banbury & ſeit' de ſtatu gradu titulo & honore Comitis Banbury in dominico ſuo ut de feodo talliat' videlt' ſibi & hered' maſcul' de corpore ſuo exeun'. Et ſic inde ſeit' exiſten' idem Willielmus Comes Banbury obiit ſic inde ſeit' ſcilt' apud p'd' paroch' Sancti Egidii in Campis in Com' Midd' p'd' poſt cujus mortem ſtatus gradus titulus & honor Comitis Banbury p'd' deſcendebat Edwardo Knollis ut fil' & hered' maſcul' de corpor' p'd' Willielmi Comitis Banbury per quod idem Edwardus fuit Comes Banbury & ſeit' de ſtatu gradu titulo & honore Comitis Banbury pred' in dominico ſuo ut de feodo talliat' videlt' ſibi & heredibus maſculis, de corpor' pred' Willielmi exeun' ſcilt' apud paroch' Sancti Egidii in Campis pred'. Et ſic inde ſeit' exiſten' idem Edwardus Comes Banbury obiit inde ſeit' ſine hered' maſcul' de corpore ſuo exeun' ſcilt' apud paroch' pred' poſt cujus mortem ſtatus gradus titulus & honor Comitis Banbury pred' deſcendebat Nicholao Knollis ut hered' maſculo de corpore pred' Willielmi Comitis Banbury videlt' fratri & hered' pred' Edwardi fil' & hered' pred' Willielmi per quod idem Nicholaus fuit Comes Banbury & ſeit' de ſtatu gradu & honore Comitis Banbury pred' in dominico ſuo ut de feodo talliat' videlt' ſibi & hered' maſcul' de corpore pred' Willielmi tunc nup' Comitis Banbury exeun' ſcilt' apud paroch' Sancti Egidii in Campis pred'. Et ſic inde ſeit' exiſten' idem Nicholaus Comes Banbury obiit inde ſic ſeit' ſcilt' apud paroch' pred' poſt cujus mortem ſtatus gradus & honor Comitis Banbury predict' deſcendebat pred' Carolo ut hered' maſcul' de corpore pred' Willielmi nuper Comitis Banbury exeun' videlt' fil' & hered' pred' Nicholai nup' Comitis Banbury fratr' & hered' pred' Edwardi fil' & hered' ejuſdem Willielmi per quod idem Carolus tempore caption' Indictament' pred' fuit & adhuc exiſtit ſeit' de & in ſtatu gradu & honore Comitis Banbury pred' in dominico ſuo ut de feodo talliat' videlt' ſibi & hered' maſcul' de corpore pred' Willielmi exeun' & Comes Banbury adhuc exiſtit ſcilt' apud pred' paroch' Sancti Egidii in Campis. Et hoc parat' eſt verificare unde ex quo non nominatur in Indictament' pred' per pred' nomen Comitis Banbury pet' Judic' de Indictament' pred' & ſi ipſe ad Indictament' ill' ulterius reſpondere compelli debeat, &c.

Creſwell Levinz.
Bartholomew Shower.

Repl. Et Johannes Somers Mil' Attorn' Domini Regis & Domine Regine nunc general' qui pro eiſdem Domino Rege & Domina Regina in hac parte ſequitur proteſtando non cognoſcendo aliqua in placito pred' Caroli fore vera dicit quod pred' C. Knowles in Indictament' pred' nominat' ad Indictament' ill' reſpondere debet quia dicit quod ipſe idem C. K. per nomen Caroli Comit' de Banbury alias ſcilt' 13 die Decembris Anno Regni dictor' Domini Regis & Domine Regine nunc quarto exhibuit quandam petitionem ſuam inſcript' Dominis ſpiritual' & temporal' in Parliament' adtunc & adhuc tent' apud Weſtm' in Com' Midd' aſſemblat' per eandem petition' allegan' & pretenden' quod ipſe idem Carolus Jure hereditar' adtunc fuit Comes de Banbury ac un' magnat' hujus Regn' Angl' ac adtunc indictat' pro morte pred' P. L. unde idem Carolus eiſdem Dominis ſpiritual' & temporal' adtunc & ibidem in eodem parliament' aſſemblat' humillime ſupplicavit quod ipſe idem Carolus de & pro morte pred' P. L. triat' eſſet per magnat' ejuſdem Regni taliterq; ſuperinde proceſs' fuit quod poſtea ſcilt' die Martis 17 die Januarii Anno Regni dictor' Domini Regis & Domine Regine nunc quarto per eoſdem Dominos ſpiritual' & temporal' in eodem Parliament' adtunc & ibidem aſſemblat' ſecundum legem & conſuetud' Parliament' reſolut' conſiderat' & ordinat' fuit quod pred' Carolus non habuit aliquod jus pred' titulo & honori Comitis Banbury quodq; iſta eadem petitio abinde dimiſs' eſſe ſicut per record' inde inter record' Parliament' hic apud Weſtm' pred' remanen' plenius liquet & apparet. Et hoc parat' eſt verificare unde pet' judic' & quod Indictament' pred' bon' adjudicetur quodq; pred' C. K. ad Indictament' illud ulterius reſpondeat, &c.

J. Somers.
T. Trevor.
J. Tremain.

Demurr' Et pred' Carolus in propria perſona ſua ven' & dic' quod pred' placitum prefat' Attorn' Dominor' Regis & Regine nunc general' in forma pred' ſuperius replicando placitat' materiaq; in eodem content' minus ſufficien' in lege exiſtunt ad compellend' eundem Carol' eidem Indictamento ulterius reſpondere unde pro defectu ſufficien' replication' ad placitum pred' prefat' Caroli in hac parte placitat' idem Carolus ut prius pet' judic' de Indictament' ill' & quod ipſe de Indictament' pred' per Cur' hic exoneretur & dimittatur, &c.

Joinder. Et Edwardus Ward Ar' Attorn' dictor' Dominor' Regis & Regine nunc general' qui pro eiſdem Dominis Rege & Regina in hac parte ſequitur pro eiſdem Dominis Rege & Regina dicit quod placitum pred' Attorn' Dominor' Regis & Regine nunc general' in forma p'd' ſuperius replicand' placitat' materiaq; in eodem content' bon' & ſufficien' in lege exiſtunt ad compellend' eundem Carol' eidem Indictament' ulterius reſpondere. Quod quidem placitum ſuperius replicando placitat' materiaq; in eodem content' idem Attorn' dictor' Dominor' Regis & Regine nunc general' pro eiſdem Dominis Rege & Regina nunc parat' eſt verificare prout Cur', &c.

Edward Ward.
Thomas Trevor.
John Tremain.

22 *March*, 1693.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That Mr. Attorney-General do give this Houſe an Account in Writing of the Proceedings in the Court of *King's-Bench*, againſt the Perſon who claims the Title of Earl of *Banbury*.

11 *April*, 1694.

Then their Majeſties Attorney-General delivered in an Account of the Proceedings in the Court of *King's-Bench*, againſt the Perſon who claims the Title of the Earl of *Banbury*, which was read as follows, *viz.*

An Account of the Proceedings in the Court of King's-Bench, *againſt the Perſon who claims the Title of Earl of* Banbury, *deliver'd in by their Majeſties Attorney-General, purſuant to an Order of the Right Honourable the Lords Spiritual and Temporal in Parliament aſſembled, the* 22*d of* March, 1693-4.

A Bill of Indictment being found at *Hicks's-Hall*, in *December*, 1692, againſt *Charles Knowles*, Eſq. for the Murder of *Philip Lawſon*, Gent. it was removed into the *King's-Bench*, and the ſaid *Charles Knowles* was, in *Hillary* Term following, arraign'd thereupon in the *King's-Bench*, and put in a ſpecial Plea in Writing to this Effect, That he ought not to be compelled to anſwer to that Indictment, becauſe King *Charles* the Firſt, by Letters Patents under the Great Seal, which he produced in Court, dated the 18th of *Auguſt*, in the ſecond Year of his Reign, created *William*, then Viſcount *Wallingford*, Earl of *Banbury*, and conferr'd upon him the Name, Stile, Title, and Dignity of Earl of *Banbury*, to hold to the ſaid *William*, and the Heirs Males of his Body for ever: That Earl *William* thereby became ſeized of the Honour of Earl of *Banbury*, to him, and the Heirs Males of his Body, and died thereof ſo ſeized; and that the ſaid Honour deſcended to *Edward*, his Son and Heir Male of his Body, who became ſeized thereof in Fee-Taile to him, and the Heirs Males of the Body of the ſaid *William*, and that he died ſeized without any Iſſue Male of his Body; after whoſe Death, the ſaid Title and Honour of Earl of *Banbury*, deſcended to *Nicholas Knowles*, as Heir Male of the Body of the ſaid *William*, (that is to ſay) Brother and Heir of *Edward*, who was Son and Heir of the ſaid *William*, by which the ſaid *Nicholas* was Earl of *Banbury*, and ſeized of the Title and Honour of Earl of *Banbury*, in his Demeſne as of Fee, to him, and the Heirs Male of the Body of the ſaid *William*, then late Earl of *Banbury*, iſſuing; and being thereof ſo ſeized, the ſaid *Nicholas* died; after whoſe Death, the ſaid Title and Honour of Earl of *Banbury* did deſcend to the Defendant *Charles*, as Heir Male of the Body of the ſaid *William*, late Earl of *Banbury*, *viz.* Son and Heir of *Nicholas*, Brother and Heir of *Edward*, who was Son and Heir of *William*; whereby the Defendant came, and yet is ſeized of, and in the State, Degree, and Honour of Earl of *Banbury*, in his Demeſne as of Fee-Taile, to him, and the Heirs Males of the Body of the ſaid *William* iſſuing, and yet is Earl of *Banbury*, which he is ready to verify; and therefore he the ſaid Defendant *Charles*, not being named in the Indictment by the Name of Earl of *Banbury*, pray'd Judgment of the Indictment, and whether he ought further to be compell'd to anſwer to it.

To which Plea their Majeſties Attorney-General, by Proteſtation, not acknowledging any thing in the ſaid Plea to be true, replied, That the Defendant ought to anſwer to that Indictment, for that the ſaid *Charles Knowles*, by the Name of *Charles* Earl of *Banbury*, the thirteenth of *December*, in the Fourth Year of their Majeſties Reign, exhibited a Petition in Writing to the Lords Spiritual and Temporal in Parliament aſſembled, thereby alledging, and pretending, that he then was by Right of Inheritance Earl of *Banbury*, and one of the Peers of this Realm; and then Indicted for the Death of the ſaid *Lawſon*, and humbly prayed the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid *Charles*, of and for the Death of the ſaid *Lawſon*, might be tried by the Peers of this Realm. And that it was thereupon ſo proceeded, that on the ſeventeenth of *January* following, it was by the ſaid Lords Spiritual and Temporal in Parliament aſſembled, according to the Law and Cuſtom of Parliament, Reſolved, Conſidered, and Ordered, That the ſaid *Charles* had not any Right to the ſaid Title and Honour of Earl of *Banbury*, and that the Petition ſhould be diſmiſſed, as by the Record thereof, amongſt the Records of Parliament more fully appeared. And prayed Judgment, That the ſaid Indictment might be adjudged good, and that the Defendant might anſwer over to the Indictment.

Some Time having been ſpent in Motions about the Pleadings, and in giving Rules to the Defendant to rejoin to the Attorney-General's Replication, and about Bailing the Defendant, and the Defendant having Demurred to the Replication, wherein the Attorney-General joined, not moving to have the Record a *Concilium* (as is uſual for the Party to do that Demurrs); the Attorney-General moved it in *Michaelmas* Term laſt, and by Rule of Court it was made a *Concilium*, and appointed to be argued the then next Term, which was *Hillary* Term laſt; in which Term, near the Beginning, it was argued by Counſel on both Sides. And on the Defendant's Counſel's Motion, another Day was appointed for a further Argument the ſame Term; at which Day it was argued on the King's Behalf, and no Counſel then attending for the Defendant, the Court made a Rule that the Defendant, ſhould anſwer over, unleſs Cauſe ſhould be ſhewed to the contrary the *Saturday* following; at which Time it was argued for the Defendant (there being then, and at the laſt Argument, only Two Judges in Court, one Judge dying in the Beginning of the Term, and another being abſent by Reaſon of Sickneſs). Upon which laſt Argument the Court diſcharged the former Rule; and upon the Defendant's Counſel's Motion, a further *Concilium* was made of it, for the next *Eaſter* Term.

The Defendant is under Bail, *Corpus* for *Corpore*.

Upon reading this Day, An Account of the Proceedings in the Court of *King's-Bench*, againſt the Perſon who claims the Title of Earl of *Banbury*, It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That ſuch of the Juſtices of their Majeſties Court of *King's-Bench* as are now in Town, and not ſick, do attend this Houſe on *Saturday* next, at Eleven of the Clock in the Forenoon.

13 *April*, 1694.

Whereas To-morrow is appointed for the Judges to attend upon the Account delivered in the eleventh Inſtant, by their Majeſties Attorney-General,

General, of the Proceedings in their Majeſties Court of *King's-Bench*, againſt the Perſon who claims the Title of Earl of *Banbury*, it is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That all the Judges now in Town, do attend this Houſe thereupon on *Monday* next, at eleven of the Clock, and that all the Lords be ſummoned then to attend.

27 *Nov.* 1694.

A Debate ariſing touching the Proceedings in the Court of *King's-Bench*, relating to the Perſon who claims the Title of Earl of *Banbury*,

The Queſtion was put, Whether Mr. Attorney-General ſhall give this Houſe an Account what Proceedings have been in the Court of *King's-Bench*, ſince the eleventh of *April*, 1694, in Relation to the Perſon who claims the Title of Earl of *Banbury*?

It was reſolved in the Affirmative.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That their Majeſties Attorney-General do give this Houſe an Account on *Tueſday* the fourth Day of *December* next, what Proceedings there have been in the Court of *King's-Bench*, relating to the Perſon who claimed the Title of Earl of *Banbury*, ſince the eleventh of *April*, 1694, and that all the Lords be ſummoned then to attend.

4 *Dec.* 1694.

After their Majeſties Attorney-General had given the Houſe an Account of the Proceedings in the Court of *King's-Bench*, in Relation to the Perſon who claimed the Title of Earl of *Banbury*, and Debate thereupon,

The Queſtion was put, Whether the Houſe ſhall be now adjourned?

It was reſolved in the Negative. And

Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the proper Officer in the Court of *King's-Bench*, do bring before this Houſe, To-morrow at eleven of the Clock, the Record of the Judgment of *Charles Knowles*, who claimed the Title of Earl of *Banbury*, and the Proceedings of that Court thereupon.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Debate this Day touching the Proceedings in the Court of *King's-Bench*, in Relation to the Perſon who claimed the Title of Earl of *Banbury*, ſhall be adjourned till To-morrow Morning, eleven of the Clock in the Forenoon.

5 *Dec.* 1694.

The Record of the Court of *King's-Bench* being this Day brought into the Houſe, (purſuant to the Order Yeſterday) relating to the Perſon who claimed the Title of Earl of *Banbury*, and a Debate ariſing thereupon, it is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Debate ſhall be, and is hereby adjourned until *Wedneſday* next, the twelfth Day of this inſtant *December*, at ten of the Clock in the Forenoon.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Records of the Court of *King's-Bench*, brought in this Day, ſhall be returned to the proper Officers, and that they attend with them again, on *Wedneſday* the twelfth Day of this inſtant *December*, at ten of the Clock in the Forenoon.

12 *Dec.* 1694.

This Day being appointed to reſume the foreſaid Debate, concerning the Perſon who claimed the Title of Earl of *Banbury*, and for the proper Officers of the Court of *King's-Bench*, to attend with the Records of that Court relating thereunto, it is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Debate ſhall be, and is hereby adjourned, 'till *Monday* the twenty-fourth Day of this inſtant *December*, at ten of the Clock in the Forenoon, and that the proper Officers of the Court of *King's-Bench* do then attend with the Records as was formerly ordered.

26 *Jan.* 1697.

A Petition to his Majeſty being this Day offered on Behalf of the Perſon who claims the Title of Earl of *Banbury*, and his Majeſty's Reference thereupon, it is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid Petition and Reference ſhall be conſidered on *Saturday* the twenty-ninth Day of *January* inſtant, at twelve of the Clock, and that all the Lords be ſummoned then to attend; and the Clerks then bring the Books wherein the former Proceedings in Relation to this Matter are entered.

29 *Jan.* 1697.

The Order being read for conſidering the Petition of the Perſon who claims the Title of Earl of *Banbury*,

The Petition to his Majeſty, and his Majeſty's Reference thereupon to this Houſe, was read as follows:

To the KING's Moſt Excellent Majeſty,

The humble Petition of Charles Knowles, *Son and Heir of* Nicholas, *Brother and Heir of* Edward, *Son and Heir of* William, *late Viſcount* Wallingford, *and Earl of* Banbury,

Humbly Sheweth,

THAT his late moſt Excellent Majeſty King *Charles* the Firſt, by his Letters Patents, under his Great Seal of *England*, bearing Date at *Cambury*. the 18th Day of *Auguſt*, in the ſecond Year of his Reign, of his ſpecial Grace, certain Knowledge, and mere Motion, did prefer and create *William*, then Viſcount *Wallingford*, to the State, Degree, and Honour of Earl of *Banbury*, and did give to him the Name, Style, and Dignity thereof, and with the ſame Name, Degree, and Dignity of Earl, did really inveſt, and nobilitate him, to hold the ſame to him the ſaid *William*, and the Heirs-males of his Body iſſuing for ever: That by Force of theſe Letters Patents, the ſaid *William* became ſeized to him, and the Heirs-males of his Body, of the ſaid Earldom, and accordingly had and enjoyed Place and Precedency in the Houſe of Peers as an Earl of this Kingdom: That the ſaid *William* died ſo ſeized, leaving *Edward* and *Nicholas* his Iſſue: That *Edward* died under Age, and without Iſſue; whereupon the ſaid Title deſcended to your Petitioner's ſaid Father *Nicholas*, and he became thereby rightfully entituled to the ſaid Name, Title, and Dignity, and was accordingly deemed, reputed, and taken as Earl of *Banbury*, and as ſuch ſat in the Houſe of Lords, in the Convention Parliament, upon the Reſtoration of King *Charles* II. That afterwards, ſome Diſpute ariſing, the Precedency of the ſaid *Nicholas*, and the Influence of the late King *James*, then Duke of *York*, prevailing againſt him, your Petitioner's ſaid Father, he was forced to withdraw and forbear the Uſe of his Right of ſitting in the Houſe as a Peer of this Realm, during his Life, although he had proved his Legitimacy and Heirſhip, by four Witneſſes, ſworn at the Bar of the Houſe of Peers, and examined at a Committee, who made a Report accordingly, in favour of his Right, as by the Proceedings in the Houſe more fully appears: That by his Deceaſe, the ſaid Title and Dignity deſcended upon your Petitioner, as his Son and Heir: That your Petitioner having had the Misfortune of being accuſed and impriſoned for killing *Philip Lawſon*, your Petitioner did, for his Trial, and in order to have it according to the Laws of this Realm, by his Peers, petition the Houſe of Lords thereupon; whereas your Petitioner ought in Duty, and according to the legal Methods in Caſes of this Nature uſed and approved, to have made his Application to your moſt Sacred Majeſty, as the Fountain of all the Honour within this Realm; and accordingly the miſadviſed Petition was diſmiſſed. And your Petitioner further humbly ſhews, That then your Petitioner was indicted for the Offence committed, by the Name of *Charles Knowles*; and upon his Arraignment in the *King's-Bench*, your Petitioner did plead the ſaid Title, and the Deſcent thereof to him, in Manner aforeſaid, and that therefore his Name was *Charles* Earl of *Banbury*; to which your Majeſty's Attorney-General replied the Diſmiſſion of the ſaid Petition by the Houſe of Peers, and thereupon your Petitioner demurred; and after many long Arguments, Judgment was given by the Right Honourable the Lord Chief-Juſtice *Holt*, and the reſt of the Judges there, in Favour of your Petitioner's Name and Title: That your Petitioner ſtands likewiſe indicted by the Name of *Charles* Earl of *Banbury*, for the ſame Offence, and that the ſame remains undetermined, for the Reaſons aforeſaid. That by Reaſon of the Premiſes, your Petitioner did ſuffer long Impriſonment, and great Expences, and is ſtill under the ſame Accuſation, by the Name of a Peer, and as ſuch hath been taxed upon the Poll-Act, and during your Petitioner's Troubles, Writs have iſſued out of your Majeſty's Court of *Exchequer*, for the ſame Charge as a Peer, which he hath ſince ſatisfied.

Now, foraſmuch as your Petitioner humbly conceives himſelf well entitled to the ſaid Title and Dignity, and that your Petitioner may the better be enabled to ſhew and manifeſt his Zeal for your Majeſty's Service, as by the Duty of his Allegiance he is obliged,

Your Petitioner humbly prays your Majeſty's tender Conſideration of the Premiſes, and that you would be pleaſed to declare your Royal Pleaſure in Favour of your Petitioner's ſaid Right, by granting him a Writ of Summons to Parliament, or to recommend your Petitioner's Caſe to an Examination by the Lords Spiritual and Temporal in Parliament aſſembled, in order to your Majeſty's more certain Information of the Truth of the Premiſes; or otherwiſe to do herein, as your Majeſty's great Wiſdom ſhall ſeem moſt meet.

And your Petitioner ſhall, as in Duty bound, daily pray for your Majeſty's, &c.

BANBURY.

William R.

WE are graciouſly pleaſed to refer this Petition to the Houſe of Peers, to examine the Petitioner's Claim and Title therein mentioned, and to certify us how the ſame ſhall appear to them, with their Opinion thereupon. Given at our Court at *Kenſington*, the 18th Day of *January*, 1697, in the ninth Year of our Reign.

By his Majeſty's Command,

JA. VERNON.

After Debate thereupon,

Theſe Lords following were appointed to draw up a Repreſentation to be preſented to his Majeſty, of what Proceedings have been formerly in this Houſe, in relation to this Matter, and report the ſame to this Houſe.

Dux *Somerſet*,

Dux *Bolton*, &c.

Their Lordſhips, or any five of them, to meet on *Tueſday* next, at eleven of the Clock in the Forenoon, in the Prince's Lodgings, near the Houſe of Peers.——And it is ordered, That this Committee do meet again on *Thurſday* the third Day of *February* next, at eleven of the Clock, in the ſame Place, to conſider of the Proceedings of the Court of *King's-Bench*, ſince the Judgment of this Houſe, 17th of *January*, 1692, in relation to this Matter, and have Power to ſend for Perſons, Papers, and Records, and report to this Houſe their Opinion thereupon.

3 *February*, 1697.

The Earl of *Rocheſter* reported from the Committee the Repreſentation drawn by them to be preſented to his Majeſty, in relation to the Proceedings of this Houſe, upon the Petition of a Perſon who claims the Title of Earl of *Banbury*, which was read, and agreed to as follows, *viz.*

We the Lords Spiritual and Temporal in Parliament aſſembled, having received a Reference upon a Petition to your Majeſty, from a Perſon who ſtiles himſelf Earl of *Banbury*, for a Writ of Summons to ſit as a Peer in Parliament, do humbly repreſent to your Majeſty, That above five Years ſince, the ſame Perſon did petition the Houſe of Lords: That being indicted for the Death of *Philip Lawſon*, he might be admitted to his Trial by his Peers; and that if any Queſtion ſhould ariſe thereupon, that he might be heard by his Counſel at the Bar of this Houſe: Upon which the Lords did order the Petitioner to be heard by his Counſel at the Bar of their Houſe, for the making out this Title to the ſaid Earldom; and alſo your Majeſty's Attorney-General to be heard on your Majeſty's Behalf; and upon full Hearing on both Sides, the Houſe came to this Reſolution and Judgment,

That

That the Petitioner had no Right to the Title of Earl of *Banbury*, and ordered his Petition to be diſmiſſed; which Judgment, the Lords have great Reaſon to believe, was not made known to your Majeſty at the Time of making the aforeſaid Reference. All which is humbly repreſented to your Majeſty.

Ordered, That the Lords, with white Staves, do attend his Majeſty with the Repreſentation of this Houſe, concerning the Perſon that claims the Title of Earl of *Banbury*.

7 *February*, 1697.

The Earl of *Rocheſter* having offered to the Houſe what he was ordered to report from the Lords Committee, appointed to conſider of the Proceedings in the Court of *King's-Bench*, ſince the Judgment of this Houſe, of the 17th of *January*, 1692, in relation to the Perſon who claimed the Title of Earl of *Banbury*, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That this Matter ſhall be conſidered on *Thurſday* next at Eleven of the Clock.

10 *February*, 1697.

After reading this Day the Reports from the Lords Committee, appointed to conſider of the Proceedings in the Court of *King's-Bench*, ſince the Judgment of this Houſe, the 17th of *January*, 1692, in relation to the Perſon claiming the Title of Earl of *Banbury*, and ſending for, and hearing the Lord-Chief-Juſtice of that Court, and Mr. Juſtice *Eyre*, to the Matter of the ſaid Report, and Debate thereupon; It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That this Debate ſhall be, and is hereby adjourned to *Monday* next, at Eleven of the Clock in the Forenoon; and that the ſaid Lord-Chief-Juſtice, and Mr. Juſtice *Eyre*, do then attend, and alſo one other Judge of each Court in *Weſtminſter-Hall*.

But there was no further Proceeding in this Buſineſs.

The Proceedings in the Houſe relating to the Title of the Earl of Banbury, *before* 22 March, 1693, *is as followeth:*

Earl of Banbury. 13 *July*, 1660.

It was moved, That there being a Perſon that now ſits in this Houſe as a Peer, who, as is conceived, hath no Title to be a Peer, *viz.* the Earl of *Banbury*, It is ordered, that this Buſineſs ſhall be heard at the Bar by Counſel, on *Monday* come Sevennight.

6 *June*, 1661.

The Lord-Great-Chamberlain ſignified to the Houſe, That the King appointed him to deliver a Paper to their Lordſhips Conſideration, which was preſented to His Majeſty, and the Houſe commanded the ſame to be read, which was done, *viz.*

To the KING's Moſt Excellent Majeſty.

The humble Petition of Nicholas, *Earl of* Banbury,

Humbly ſheweth,

THAT your Majeſty's Royal Father, King *Charles*, by his Letters Patents, under the Great Seal of *England*, bearing Date the eighteenth of *Auguſt*, 2 *Car.* for the great and many Services done by your Petitioner's Father, Sir *William Knowles*, Knight, and Viſcount *Wallingford*, granted to him, and his Heirs Males of his Body iſſuing, the Name, Title, and Dignity of Earl of *Banbury*, with all Privileges of State, and Voice in Parliament, as other Peers of the Kingdom had, as by the ſaid Letters Patents more fully appears.

That the ſaid Earl, after marrying with *Elizabeth*, Daughter of the Earl of *Suffolk*, had Iſſue by her, *Edward*, his eldeſt Son, who died without Iſſue, and your Petitioner was born in *January*, 1630, about a Year and a Half before the ſaid Earl's Death.

That your Petitioner, as Son and Heir of the ſaid late Earl, ſate in laſt the Parliament as Earl of *Banbury*, as of Right he might, and hath uſed and had all Privileges as other Earls there; but having no Writ of Summons to this preſent Parliament from your Majeſty, as other the Peers have, hath forborne to ſit there, although he hath done nothing to deprive him of his Title thereto, nor to his Knowledge to incur your Majeſty's Diſpleaſure.

Your Petitioner therefore humbly prays, That your Majeſty will be graciouſly pleaſed, that he may have a Writ of Summons to this Parliament, as Earl of *Banbury*, and enjoy all the Precedency and Privilege thereunto belonging, granted by your Majeſty's Royal Father, by his ſaid Letters Patents.

And your Petitioner ſhall acknowledge your Majeſty's Juſtice therein, with due Gratitude, and with all Alacrity and Fidelity endeavour to ſerve your Majeſty with his Life and Fortune, and ever pray for your Majeſty's long and happy Reign.

BANBURY.

This being read, the Lord Chancellor acquainted the Houſe, That His Majeſty ſignified his Pleaſure to him, that no Writ ſhould be iſſued out to Summon the Earl of *Banbury* to this Parliament, upon ſome Queſtion that was made in this Houſe laſt Parliament, concerning him.

Hereupon it is Ordered, That the ſaid Petition, and Contents thereof, are hereby referred to the Lords Committee for Privileges, who having heard the Petitioner by his Counſel, or otherwiſe, and Mr. Attorney-General on the King's Behalf, are afterwards to make Report thereof to this Houſe, and their Lordſhips to meet when they pleaſe.

15 *June*, 1661.

Upon Report of the Committee of Privileges, That the Earl of *Banbury* deſires ſome Witneſſes may be examined on his Behalf, among whom is the Counteſs of *Saliſbury*, It is Ordered, That the Committee have hereby Power to ſend for ſuch Witneſſes as they think fit; obſerving ſuch Decorum as the Quality of the Perſon requires: And further, That Mr. Attorney-General do attend that Committee on *Monday* next in the Afternoon.

20 *June*, 1661.

Ordered, That the Report from the Committee of Privileges, concerning the Earl of *Banbury*, ſhall be made on *Friday* the twenty-eighth of this Inſtant *Jun.*

1 *July*, 1661.

Upon the Report this Day made, concerning the Petition of *Nicholas* Earl of *Banbury*, formerly brought into this Houſe by a Peer of this Realm from his Majeſty, whereby the Petitioner prayeth a Writ of Summons to this Parliament, as Earl of *Banbury*, and to enjoy all the Precedencies and Privileges thereunto belonging, granted by his Majeſty's Letters Patents to the laſt Earl of *Banbury*; It is Ordered, That the Cauſe ſhall be heard at the Bar on *Monday*, the eighth Day of this Inſtant *July*, by Counſel, and Witneſſes are to attend at the ſaid Hearing; at which Time, Mr. Attorney-General, and others of his Majeſty's Counſel, (having timely Notice given) are likewiſe to be heard on the King's Behalf.

9 *July*, 1661.

This Day the Cauſe of *Nicholas* Earl of *Banbury*, upon his Petition, wherein he prays a Writ of Summons to this Parliament, as Earl of *Banbury*, and to enjoy all the Precedencies and Privileges thereunto belonging, granted by His Majeſty's Letters Patents to the laſt Earl of *Banbury*, was heard by Counſel on the Earl's Part; and alſo Mr. Attorney-General, Serjeant *Maynard*, and Serjeant *Glynn*, Counſel on the King's Behalf, were heard; and in regard it was now late, It is Ordered, That the Reſolution of this Buſineſs ſhall be taken into Conſideration To-morrow Morning.

10 *July*.

Upon Conſideration of the Buſineſs of the Earl of *Banbury*, heard at this Bar Yeſterday, and after a long Debate thereof, It is Ordered, That the Matter now in Debate, concerning the Earl of *Banbury*, is referred to the Conſideration of the Committee of Privileges; and alſo the Matter of the Right of Precedency between the ſaid Earl of *Banbury*, and ſeveral Peers of this Realm, and to make Report thereof to this Houſe; the Committee to meet on *Monday* next, at Three of the Clock in the Afternoon.

19 *July*.

The Earl of *Northampton* reported from the Committee of Privileges, that their Lordſhips have conſidered of the Earl of *Banbury*'s Buſineſs referred unto them, and their Opinion is, That the Earl of *Banbury* is, in the Eye of the Law, Son of the late *William*, Earl of *Banbury*; the Houſe of Peers ſhould therefore adviſe the King to ſend him a Writ to come to Parliament.

Alſo their Lordſhips are of Opinion, that the Earl of *Banbury* ought to have Place in the Houſe of Peers, according to the Date of his Patent, and not according to the Tenor of that Part thereof which ranks him before other Earls created before *William*, Earl of *Banbury*. All which the Committee offer to their Lordſhips Judgment.

Ordered, That this Houſe will take this Report into Conſideration To-morrow Morning.

25 *July*.

Ordered, That on the ſecond *Thurſday* after the next Meeting of this Houſe, after the Adjournment, this Houſe will take into Conſideration the Report of the Earl of *Banbury*'s Buſineſs.

28 *Nov.* 1661.

The Houſe took into Debate the Report concerning the Earl of *Banbury* formerly made to this Houſe; and the Queſtion being put, Whether to put off the Conſideration of this Buſineſs to a further prefixed Day? It was reſolved in the Affirmative.

9 *Dec.* 1661.

An Act was read a firſt Time, declaring *Nicholas*, Earl of *Banbury*, to be Illegitimate.

26 *Oct.* 1669.

Upon calling of the Houſe of Peers this Day, the Houſe taking Notice that the Earl of *Banbury*'s Name is not in the Liſt by which the Lords were called, It is Ordered, That it be referred to the Committee of Privileges, to examine why the ſaid Earl of *Banbury*'s Name is left out of the ſaid Liſt, he having formerly ſate as a Peer in this Houſe, and to peruſe all former Proceedings in this Houſe concerning him, and to make Report thereof to the Houſe.

25 *Nov.* 1669.

The Earl of *Eſſex* reported to the Houſe, that the Committee of Privileges, in purſuance of the Order of this Houſe, have examined their Proceedings concerning the Earl of *Banbury*; the Order conſiſted of Two Parts, *Firſt*, Why his Lordſhip's Name was left out of the Liſt of the Peers, touching which the Lords have ſpoken with Sir *Edward Walker*, Principal King of Arms, who delivered in the Liſt, and he produced a Book out of the Herald's Office, where it appears that the laſt *William*, Earl of *Banbury*, died in the Year 1632, and having had two Wives, left no Children.

Likewiſe he produced a Roll, being a Procedure of the King and the Peers to Parliament in 1640, in which Liſt there is no mention of the Earl of *Banbury*'s Name among the Peers.

Upon theſe Grounds the ſaid *Edward Walker* left out the Name of the Earl of *Banbury* in his Liſt given unto this Houſe.

The ſecond Part of the Order was to preſent to the Houſe, an Account of the former Proceedings in this Houſe, concerning the Earl of *Banbury*, and the Lords Committee find, That 6 *June*, 1661, *&c.* being a Recital of the Proceedings before ſet forth.

23 *Feb.* 1669.

A Petition was preſented to this Houſe from the Earl of *Banbury*, which was read as follows:

To the Right Honourable the Lords Spiritual and Temporal in Parliament Aſſembled,

The Humble Petition of Nicholas, *Earl of* Banbury,

Sheweth,

THAT your humble Petitioner hath the Honour to be a Peer of this Realm by Deſcent, and is legally entituled by Right of Inheritance, to the Dignity and Honour of the Earl of *Banbury*, and ought therefore to have and enjoy his Voice and Seat in Parliament, and all other Preheminencies to ſuch Dignity belonging; and hath always, in all Taxes, and Payments of Poll-Money, and Benevolencies, paid ſuch Sums, and in ſuch Proportions, as to the Quality and Degree of an *Engliſh* Earl did appertain.

Nevertheleſs your Petitioner hath not yet had the Honour to receive from his Majeſty ſuch a Writ of Summons to Parliament as is uſually granted to other Peers of this Realm. Wherefore, ſince your Petitioner is well aſſured that no legal Impediment can be objected and proved againſt him, he moſt humbly prays this Moſt Honourable Houſe, that he may receive ſuch a Writ of Summons to the Parliament now Sitting, as may enable him to ſerve His Majeſty there, according to the Duty of his Place and Quality.

And your Petitioner ſhall pray, &c.

BANBURY.

Upon this, the Houſe made this Order following:

Upon reading the humble Petition of *Nicholas* Earl of *Banbury* this Day, praying, that he may receive ſuch a Writ of Summons to the Parliament now Sitting, as may enable him to ſerve His Majeſty there, according to the Duty of his Place and Quality, It is Ordered, That the ſaid Petition be referred to the Lords Committee for Privileges, whoſe Lordſhips having conſidered thereof, are afterwards to report their Opinions to the Houſe.

10 *June*, 1685.

Upon reading the Petition of a Perſon that claimeth the Title of Earl of *Banbury*, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That it be referred to the Lords Committee for Privileges, to examine all former Proceedings of this Houſe, relating to that Caſe, and to report the ſame to this Houſe.

23 *June*, 1685.

The Earl of *Ayleſbury* reported from the Committee of Privileges, that their Lordſhips had read the Petition of the Perſon that claimeth the Title of Earl of *Banbury*, referred by the Houſe to them to examine all former Proceedings of the Houſe relating to that Cauſe; that their Lordſhips find, *&c.* being a Narrative of all Proceedings before recited. Whereupon the following Order was made:

Upon Report from the Committee for Privileges of the State of Proceedings in the Journals of this Houſe in the Buſineſs referred to them, concerning the Claim of a Perſon to the Title of Earl of *Banbury*, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That this Houſe will hear His Majeſty's Attorney-General on His Majeſty's Behalf againſt the ſaid Claim, as alſo Counſel for the Perſon who claims the ſaid Title of Earl of *Banbury*, on *Monday* the Sixth of *July* next, at Ten of the Clock in the Forenoon.

13 *December*, 1692.

Upon reading the Petition of a Perſon that claims the Title of Earl of *Banbury*, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That this Houſe will hear His Majeſty's Attorney-General on His Majeſty's Behalf, and all other Perſons that may be concerned therein, againſt the ſaid Claim, as alſo Counſel for the Perſon who claims the ſaid Title of Earl of *Banbury*, on *Monday* the 9th Day of *January* next, at Ten of the Clock in the Forenoon, whereof the Petitioner is to cauſe timely Notice to be given to His Majeſty's Attorney-General, and all other Perſons that may be concerned in the ſaid Claim.

9 *January*, 1692.

After hearing Counſel this Day at the Bar, upon the Petition of the Perſon that claimeth the Title of Earl of *Banbury*, and Their Majeſties Attorney General, and Debate thereupon, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Conſideration of this Buſineſs ſhall be, and is hereby adjourned to *Saturday* next at Twelve o'Clock, and that the Two Inquiſitions taken formerly concerning this Caſe, ſhall be then brought, and that the Heralds do then attend, and bring with them all ſuch Papers and Evidence as are in their Office, relating to this Matter, and that Their Majeſties Attorney-General be then further heard on Their Majeſties Behalf, and all others that may be any wiſe concern'd.

14 *January*, 1692.

Counſel being called in, and after ſome Time withdrawn, the Order following was made:

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Officer, who hath the Cuſtody of the Inquiſitions taken after the Death of *William* Earl of *Banbury*, in the Counties of *Berks* and *Oxon*, do forthwith attend this Houſe with the ſaid Inquiſitions.

The Attorney-General being appointed to attend this Day, and not being preſent when the Cauſe of the Perſon claiming the Title of Earl of *Banbury*, was to be argued at the Bar of this Houſe, the following Order was made: It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That an Addreſs ſhall be made to His Majeſty, that the Attorney-General for the Time being may attend this Houſe as an Aſſiſtant, and that it be referred to the Lords Committee for Privileges, to draw the ſame, and that the Committee meet on *Tueſday* next, at Four of the Clock in the Afternoon.

After hearing this Day the Heralds at Arms, as to the Petition of the Perſon that claims the Title of Earl of *Banbury*, as alſo the Attorney-General on Their Majeſties Behalf, againſt the ſaid Claim, and Counſel for the Perſon claiming; It was reſolved, upon the Queſtion, That the Debate thereupon ſhall be adjourned until *Tueſday* Morning next, the firſt Buſineſs.

17 *January*, 1692.

Then the Order of the fourteenth Inſtant being read for reſuming the adjourned Debate, concerning the Petitioner who claims the Title of Earl of *Banbury*, and the Inquiſition formerly taken upon the Death of *William* Earl of *Banbury* being alſo read, and after Debate upon the ſaid Claim,

This Queſtion was put, Whether all the Judges ſhall be heard in this Caſe?

It was reſolved in the Negative.

Diſſentient 16.

Then this Queſtion was propounded;

Whether the Petitioner hath any Right to the Title of Earl of *Banbury?*

Upon which the previous Queſtion was put, whether this Queſtion ſhall be now put?

It was reſolv'd in the Affirmative.

Then the main Queſtion was put,

Whether the Petitioner hath any Right to the Title of Earl of *Banbury?*

It was reſolved in the Negative.

Diſſentient 20.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Petition preſented to this Houſe the 13th of *December* laſt, by a Perſon claiming the Title of Earl of *Banbury*, ſhall be, and is hereby diſmiſſed this Houſe.

The ARGUMENTS *of the Lord-Chief-Juſtice* Holt, *and Judge* Powel, *in the Controverted Point of* PEERAGE: *In the Caſe of the* King *and* Queen *againſt* Charles Knowles, *otherwiſe Earl of* Banbury.

The King *and* Queen *againſt* Charles Knowles, *otherwiſe the Earl of* Banbury.

HE was Indicted at the *Old-Bailey* of Murder, and removed the Indictment by *Certiorari* into the *King's-Bench*, and there pleaded, in Abatement of the Indictment, that he being indicted by the Name of *Charles Knowles*, Eſq. at the Time of the taking of the Indictment, was Earl of *Banbury*, and ought to have been indicted by that Name; and by his Plea intitles himſelf to that Dignity, under *Edward* late Earl of *Banbury*, whom he alledgeth to be ſeized, and being ſeized *obiit inde Seiſitus*, but omitted in the Plea *ſine Herede Maſculo de Corpore ſuo exind'*, he making his Title on Failure of Iſſue-Male of *Edward*. Then in another Part of his Plea it is alledged, *Per quod idem Carolus fuit & adhuc exiſtit Seiſitus*, omitting, *Tempore Captionis Indictamenti predict'*, the Attorney-General had replied to the Plea: But before any other thing done, or the Plea, or Replication entered on Record, the Defendant's Counſel moved they might have Leave to amend their Plea in the Particulars before-mentioned. The Chief-Juſtice *Holt*, my Brother *Dolben*, and myſelf, being only in Court, and taking Time to conſider of it, my Brother *Dolben*, and myſelf, delivered our Opinions, that he might amend it; and my Reaſons were, that many Amendments had been made in Criminal Matters by the Court, as appears by Sir *John Curſon*'s Caſe, 2 *Cr.* 529. and *Rolls* 2 *Rep.* 59. *Delvridge*'s Caſe, *Siderf.* 243, 225. and *Car. Cr.* 144. And that none of theſe Amendments could be made by Force of any of the Statutes of *Jeofailes*, none of them extending to any Criminal Cauſe, or other Cauſe, wherein the King is a Party; as an Information of Inſtruction, or *Quo Warranto*, *Car. Cr.* 312. the King againſt *Sherington Talbot*; and therefore thoſe Amendments muſt be made by the Warrant of the Common Law; and if the Common Law warrants any Amendments in Criminal Matters, certainly while Matters are in *Fieri*, and in the Court by Pleadings, in Order to bring them before the Court for Judgment, before they are entered on Record, the Court may give the Party Leave to Amend, as well in Criminal Cauſes as Civil, before the Matters are compleated and entered on Record. And I ſaid, I could ſee no Difference, in that the Pleadings in the Civil-Side were brought into the Office in Paper; and in the Crown-Side, in Treaſon, or Felony, they were brought into the Office in Parchment. For to ſay it is all Paper, in order to induce the Court to allow the Amendments, is but a Phraſe uſed to ſignify to the Court that nothing is entered on Record; and 'till then the Court hath Power over what is agitated there to allow reaſonable Amendments, in order to bring the Matter before the Court, and relied on the Caſe of the Attorney-General againſt *Trinity-Houſe*; *Siderf. Fol.* 54. But the Chief-Juſtice was *totis viribus* againſt the Amendments, ſaying, It was never done but by reaſon of our Opinions.

The KING and QUEEN againſt Knowles.

THE Defendant ſtands indicted by the Name of *Charles Knowles*, Eſq. for the Murder of *Philip Lawſon*, who comes and pleads in Abatement of this Indictment, that King *Charles* the Firſt, by his Letters Patent, under the Great Seal of *Great Britain*, dated the eighteenth of *Auguſt*, in the Second Year of his Reign, which he ſhews to the Court, did create *William*, then Viſcount *Wallingford*, Earl of *Banbury*, to hold to him, and the Heirs-Males of his Body; by virtue of which Letters Patent he was ſeized of the Honour in his Demeſne, as of Fee-Taile, and being ſo ſeized, died thereof ſeized; after whoſe Death, the Honour of the Earl of *Banbury* deſcended to *Edward Knowles*, as Heir-Male of his Body; who afterwards died ſeized of that Honour without Heir-Male of his Body; after whoſe Death, the Honour deſcended to *Nicholas Knowles*, Brother of the ſaid *Edward Knowles*, as Heir-Male of the Body of *William*, whereby he became Earl of *Banbury*; and being ſo ſeized of that Honour, the ſaid *Nicholas* died thereof ſeized, whereby the Honour deſcended to the Defendant, *Charles Knowles*, as Heir-Male of the Body of *Nicholas*, whereby he is ſeized of the Honour in Fee-Taile to him, and the Heirs-Males of his Body; and concludes, *& hoc parat' eſt verificare*; and demands the Judgment of the Court, Whether he ought to anſwer to the Indictment, not being indicted by the Name of Earl of *Banbury*. To which Plea the King's Attorney hath replied, That the Defendant, by the Name of Earl of *Banbury*, did exhibit a Petition to the Lords Spiritual and Temporal in Parliament aſſembled, thereby alledging and pretending, that, by Right of inheritance, he was Earl of *Banbury*, and one of the Peers, and was indicted for the Death of *Lawſon*, and prayed he might be tried by his Peers; and that *taliter ſuperinde proceſſum fuit*; that by the ſaid Lords Spiritual and Temporal, *Secundum Legem & Conſuetudinem Parliamenti reſolutum, conſideratum, & ordinatum fuit*, that the Defendant, *Charles Knowles*, had not any Right to the Titles and Honours of Earl of *Banbury*, and that his Petition ſhould ſtand diſmiſſed; whereupon the Defendant demurs. And I am of Opinion that Judgment in this Caſe ought to be given for the Defendant, and that his Plea is good, and no ways avoided by the Replication; there having been two Exceptions taken by the King's Counſel againſt the Plea, which I ſhall firſt anſwer, before I ſpeak to the Matter of the Replication. The firſt is, That the Defendant hath concluded his Plea with *hoc parat' eſt verificare*, and not *per Recordum*; whereas Peerage can no way be tried but by Matter of Record, which is moſt true, that Peerage by Creation is triable only by Record, but it is a *non ſequitur*, that therefore his Plea ought to conclude with a *verificare per Recordum*; and indeed

indeed the Plea which now is good, had been bad, if it had ſo concluded; for he having pleaded his Letters Patent of Peerage to his Anceſtor, under whom he derives his Honour with a *profert in Cur'*, he hath ſufficiently certified the Foundation of his Peerage by Matter of Record, he being a complete Nobleman by his Creation, by his Letters Patent, without any other Ceremonies, as appears by *Penſon* and *Redhead*'s Caſe, *Noy*, 150. *Inſt.* 16. *C.* 10. the 12 *Rep.* 71. And if he be to be arraigned after ſuch Creation, and before the Parliament ſits, he ſhall be try'd by his Peers. And where Letters Patent are pleaded and ſhewn to the Court under the Great Seal, the adverſe Party cannot deny them, nor plead *Nul tiel Record*, *Eden*'s Caſe in the 6th Report, and need not conclude with a *verificare per Recordum*, for he cannot have a Day to bring in the Record which he hath already ſhewn to the Court, beſides the Deſcent of *Edward* to the Honour, his dying without Iſſue, whereby it came to *Nicholas*; and his Death, and the Deſcent to the Defendant pleaded, after the Letters Patent ſet forth, are all Matters of Fact, triable by the Country, and not by the Record, by Reaſon whereof he could not ſo conclude his Plea, there being no Authority in Law to warrant the Conceit of the King's Counſel, that there muſt be a Writ out of Chancery under the Great Seal, certifying all theſe Matters the Defendant hath pleaded to make out his Peerage, the Books cited by them no ways warranting that Opinion; for the Books of 35 *Hen.* VI. 46. *No.* 3. 165, and 347. *Reg.* 287. *Dyer*, 314. 48 *Edw.* III. 30, 48 *Aſſ. Pl.* 6. and 4 *Inſt.* 126, are all Writs of *Privilege*, or *Cautionary Writs*, as may be ſeen in the Lord *Savile*'s Caſe, *Car. Croke*, 205. not to put Peers in Juries, or make other Proceſs againſt them than by the Law ought to be, and nothing to the purpoſe. And the Books of 22 *Aſſize Pl.* 24. which is abridged in *Br. tit' Aſſ.* 240. which gives the greateſt Umbrage. So this Opinion makes out no more but that Peerage is triable by Record, and not by Jury; for it is plain the Plea there pleaded in Abatement was ill, that he was the Son of an Earl, and not named Earl; for the Foundation and Subſtance of his Plea being a Matter of Record, ought to have been certainly alledged by him, 1 *Inſt.* 303. And he ought to have began his Plea in his Anceſtor Nobilitated by the Matter of Record, and then deduced his Deſcent under him, which cauſed the Saying there, *That Peerage was not triable by the Aſſizes, but by the Record out of Chancery.* And it is plain from that Book, the Plea was not allowed; for they did plead over to the Aſſize: So how this can be made an Authority, that a Writ muſt be had out of Chancery, certifying all theſe Matters of Fact, and that they muſt be ſo ſaid, I do not underſtand. My Lord *Coke*, in his 1 *Inſt.* 74. tells us of ſix Manners of Trial by Certificate, of which I am ſure this is none: Neither is there any ſuch Writ or Precedent of ſuch a Trial to be found in any of our Law-Books, of which a Certificate by Writ appears; and Writs being, as *Fitz-Herbert* tells us in the Preface to his *Natura Brevium*, the Foundation on which the Law depends. If there be no ſuch Writ, we may ſafely conclude there is no ſuch Law; and it is evident by 1 *Inſt.* 16. and the Counteſs of *Rutland*'s Caſe in the ſixth Report, that Nobility may be gain'd by Matter in Fact, as Marriage, as well as by Creation and Inheritance. Nobility may be alſo gain'd by Deſcent after Creation; which Deſcent and Marriage are Matters of Fact, and triable by Jury, as is held in the 6th Report 53. and therefore the Plea here well concluded, and is good, notwithſtanding the Exception. Neither is the other Exception, which hath been taken to the Plea, of more Weight; which is, that it doth not appear by the Defendant's Plea he is a Peer, the Defendant having not pleaded his *Unus Pariu' hujus Regni Angliæ*, nor averr'd *Banbury* to be in any County of *England*; which, I think, he need not to do, and that it is now better pleaded than if it had been ſo pleaded; for he hath by his Plea certainly pleaded the Letters Patent of Creation to his Anceſtor under the Great Seal of *England*, whereby he was made Earl of *Banbury*, and ſhews them to the Court; and being Nobilitated under the Great Seal of *England*, he is a Peer of *England*, tho' the Place from which he has his Name of Honour be not in *England*, but in a foreign Country; for, that a Lord hath the Name of a Place in his Style, is of no further Neceſſity than that the Patentee might have an Eſtate in his Honour within the Statute, *de Donis*, which, without ſuch a Name, would be a Fee-Simple Conditional, 22 *Rep.* 81. 7 *Rep.* 33. *Nevil*'s Caſe. And I believe no Patent of Creation of an Earl can be ſhewn, wherein the Name of Honour is mentioned in the Patent to be in any County: Of Barons, there are ſome in which the Place is named to be in ſuch a County, but very many are otherwiſe, which ſhews it not neceſſary. But I muſt agree that an *Iriſh* Peer muſt be created under the Great Seal of *England*; but then they are diſtinguiſhed from *Engliſh* Creations by *in Terra*, or *in Regno*, or *in Domino noſtro Hiberniæ*, or the like, in due Places of the Patent, *Selden's Titles of Honour*, 696. *Pryn*'s *Animadverſions*, 316. which makes the Diſtinction: For, without thoſe Words, it would be an *Engliſh* Creation paſſing the Great Seal; and though this be in a Plea in Abatement, which requires a Certainty, yet that Certainty is to be but to a certain Intent in general, 1 *Inſt.* 303. And if Noblemen made under the Great Seal of *England*, are generally to be intended Peers of *England*, then this Plea, ſo pleaded, contains in it ſufficient Certainty without other Averment, or the preciſe Words of *Unus Parium*. It is true, had a Biſhop, who is a Peer *ratione Baroniæ*, which he holds in *Jure Eccleſiæ*, had Occaſion to have pleaded ſuch a Plea, or a Plea to the Juriſdiction of the Court, he muſt have pleaded his Peerage in that Manner that he is *unus de Paribus Regni*; for he hath no Letters Patent to plead, 4 *Inſt.* 15. But he who is a Peer *ratione Nobilitatis*, needs not plead his Peerage otherwiſe than according to his Creation. So that the Defendant's Plea, notwithſtanding theſe Objections to it, I hold good.

The next Thing to be conſidered is, Whether the Replication to it doth any ways avoid it; which is no more, but whether this Vote, Judgment, or Order of the Houſe of Peers, for in all the Words of it, it is pleaded *reſolutum, conſideratum, & ordinatum fuit*, (and I would take it in its largeſt Extent the Matter itſelf will bear) doth any ways take away or barr the Defendant of his Name of Dignity. And I am of Opinion it doth not. Nobility is fixed to the Identity of the Perſon, and inherent in the Blood Nobilitated by the King, and cannot be granted over or barr'd by him who hath it, as is held in *Jones*'s *Rep.* 116. and the 4th *Inſt.* 126. and reſolved in Parliament in my Lord *Purbeck*'s Caſe, *Shower*'s Caſes in Parliament, *Pag.* 1. And if it be an Honour of Inheritance, the Heir of the Peer on whom it deſcends cannot wave it, or the Privilege of it as to be tried by his Peers, and is ſo held in the Lord *Delaware*'s Caſe in 11 *Rep.* and 3 *Inſt.* 30. And as a Peer cannot diveſt himſelf of his own Honour, or the Privilege of it, ſo his Peerage can by no Law of this Kingdom, as I know, be taken from him, but by Act of Parliament, Attainder of his Perſon, or by the *Scire Facias*, to repeal his Patent, if the Creation is by Letters Patent; for where the Creation is by Letters Patent, they being once under Seal, the King cannot countermand them, as is held in the Lord *Abergavenny*'s Caſe, 12 *Rep.* 71. though where he is deſigned to be enobled by Writ, the King may ſuperſede the Writ after it is under Seal, and before the Parliament; but Letters Patent under the Great Seal are a Conveyance at the Common Law, and the Patentee hath an Intereſt ſettled in him in Things thereby granted, which is to be directed and governed by the Rules of Law; and therefore a Peer, if he be created by Letters Patent, his Eſtate of Inheritance in thoſe Patents muſt be limited by apt Words, or elſe the Grant will be void; becauſe it is ſettled in him, and by a Conveyance at the Common Law, as is held 1 *Inſt.* 16.

And, by ſuch a Creation, an Honour may be intail'd within the Statute *Weſtm.* 2. and the Deſcent of it is to be governed according to the Rules of the Common Law; and it is reſolved to be an Hereditament forfeitable for Treaſon within 26 *H.* VIII. *Nevill*'s Caſe, 7 *Rep.* 34. and therefore the Defendant having by his Plea intitled himſelf to an Eſtate Taile in this Honour, under the Letters Patent to Viſcount *Wallingford*, and the Heirs-Males of his Body, as a lineal Deſcendant under that Intail, hath a Freehold and Inheritance in that Honour veſted in him by Common Law, to be protected in it, and governed according to the Rules of Law; and cannot be diſinherited, or debarred of it by the known Laws of the Kingdom, unleſs it be *Judicium Parium*, or *per Legem terræ*, which my Lord *Coke* in his 2 *Inſt. fol* 49 and 50. ſays, is by due Proceſs of Law, or lawful Trial in Courſe of Judicature, on neither of which is this Vote or Order founded. For though the Houſe of Peers be a ſupreme Court of Record, yet every Vote there paſſed is not an Act of Judicature, unleſs the Proceedings in order to it had been judicial; which in this Caſe, I think, is pretty clear they were not: For the Defendant's Petition to be tried, being indicted of Felony, could give them no Juriſdiction over his Peerage; and as a Houſe of Peers, I take it, have no ſuch Power, unleſs the King, on a Petition, refers the Matter to them, which gives them a Juriſdiction, which before they had not. And this appears by the Lord *Delaware*'s Caſe in the 11 *Rep.* And the Lord *Willoughby*'s and the Earl of *Oxford*'s Caſe, in *Jones*'s *Rep.* 96. and the other Precedents cited by my Brother *Levinz* of my Lord *Abergavenny*'s, the Lord *Purbeck*'s, the Lord *Fitzwalter*'s, * the Lord *Berkly*'s, the Lady *Obrian*'s, the Lady *Freſcheivill*'s, and the Lady *Felton*'s Caſes, which were all determined by the King's Reference on their Petitions to him in the Houſe of Peers: For the King, being the Fountain of Honour from whence all Dignities are derived (for none can be a Peer without the King's Creation, or his Conſent by Act of Parliament; for it is held in *Jones*'s Rep. 104. an Ordinance of the Houſe of Lords cannot make a Peer), the King hath an Intereſt in the Perſon ſo dignified for his Council in Peace, and Defence in War, as appears in the 7th *Rep.* 34, and 9 *Rep.* 49. And by reaſon of his great Truſt and Confidence, the Honour cannot be taken from the Peer, or transferred by him, being an Incident inſeparable to him, without the King's Conſent; 12 *Rep.* 28. 4 *Inſt.* 126. and by the Common Law, the King having a Prerogative to try his Cauſe in what Court he pleaſes, 4 *Inſt.* 17. when a Petition is exhibited to him for any Right the Subject pretends to, be it Peerage, or other Thing, the King may indorſe that Petition as he pleaſeth; which Indorſement the Party muſt purſue, for the Indorſement is the Warrant, and gives the Juriſdiction: *Standford's Prerogative* 738. Therefore without ſuch Reference, by Indorſement of a Petition, they can have no Juriſdiction; for then Peerage might be taken away without the King's Conſent, which by Law I have proved it cannot be: And no Precedent hath been cited, nor I believe can be found, where the Houſe of Lords did ever take on them to determine Right of Peerage without ſuch Reference on a Petition firſt made to the King, or did vote or adjudge a Man to have no Right to his Peerage, who petitioned to be tried by his Peers; and, where there is no Example, nor Precedent, it is a forceable Argument that the Law will not bear it, for what never has been done ſhall be preſumed never could be done: I muſt agree that the Houſe of Peers have Juriſdiction over their own Members in Matters of Privilege, Precedency, and for any other Thing relating to the Parliament, which are to be determined *Secundum Legem & Conſuetudinem Parliamenti*, but not by the Common Law, 4 *Inſt.* 15, and 363. But over the Eſtates or Honours of their own Members, in which they have Freeholds and Inheritance, no Law, as I know, has given them Power; nor made them any Judicature for that Purpoſe, they being to be determined and governed by the known Rules of the Common Law, which is every Subject's Birth-right, and to which he is born inheritable; and by any other Law or Cuſtom, though the Houſe of Lords be the ſupreme Court of Record in the Kingdom, and its Juriſdictions, and the Methods of its Proceedings are aſcertained by that Law; and therefore though it were Ordered in the Lords Houſe, that thoſe who were ſent Juſtices to *Ireland* ſhould have no Excuſe; yet that being but an Order, was void to bind the Subject, 2 *Inſt.* 47. And, I hope, it can be no Diminution of the Power of that Honourable Houſe, whilſt I affirm they can do in that ſupreme Court no more than what by Law they may do; and if they exceed that Power by holding Plea, of which the Common Law hath not given a Juriſdiction, what they do will be void, and of void Things all Perſons may take Advantage. And no ſuch Judg-

* See theſe Caſes in a Book, entituled, *Proceedings, Precedents, and Arguments on Claims and Controverſies about Baronies by Writ, and other Honours.* Fol. Printed 1734.

ment or Proceeding can bind any inferior Court from examining of it, or declaring it to be void in Law; for ſuppoſe a Writ of Error was brought in the Houſe of Lords of a Judgment given in the Common-Pleas, as was attempted by the Biſhop of *Norwich* in *Edward* Third's Time, which you may ſee in the 4 *Inſt.* 31. and the Lords ſhould reverſe ſuch Judgment, might not the Common-Pleas, tho' they are an inferior Court, judge it to be void, and iſſue an Execution on that Judgment, the Reverſal being void, no Writ of Error lying in Parliament of any ſuch Judgment? And if this be a Judgment or binding Order, which is ſet out in the Replication, that the Defendant hath no Right to the Title or Honour of Earl of *Banbury:* One or both of theſe two things muſt be wrought by it, *viz.* The Patent of Creation vacated and damned, or the Defendant, or ſome under whom he derives his Deſcent to this Honour illegitimated, neither of which can be done by this Method of Proceedings in this ſupreme Court on the Defendant's Petition to be tried: For the Letters Patent being a Conveyance at the Common Law, the Patentee is entituled to the thing thereby granted by Matter of Record, which cannot be vacated but by a *Scire Facias* at the Suit of the King, to which the Patentee may have his Anſwer, *Dyer* 198. For our Law judgeth no Man before he be heard; and the Defendant, or any other of the Deſcendants in the Eſtate Taile to their Honour, cannot in this ſummary way by a Vote be baſtardized without a lawful Trial; which in general Baſtardy muſt be by Certificate of the Ordinary; or in particular Baſtardy alledged, it muſt be tried by Jury, 2 *Inſt.* 99. Sir *John Davies*, *Rep.* 52. And no Man by the Law can by any Means, unleſs by Act of Parliament, be made illegitimate after his Death, 1 *Inſt.* 244. and it would be of miſchievous Conſequence to the noble Peers, did they hold their Honour in which they have Freeholds and Inheritances, ſubject to a Law differing from the known Laws of the Kingdom, which Law is, as Mr. Attorney phraſeth it, *Inter arcana Imperii*; and not to be underſtood by inferior Courts of *Weſtminſter-Hall*, for then, I fear, they would have but a dark Title to their Honours. And as it is the Defendant's Turn at preſent, what Nobleman's Caſe it may be next to be voted no Peer, I know not; therefore it being the Intereſt and Title of every Peer to his Honour, which I here aſſert and maintain, I truſt I ſhall not offend againſt the Juriſdiction of that Houſe, in adjudging this Order void, and no Bar to the Defendant's Honour, being warranted ſo to do by the ſupremeſt Power; *viz.* an Act of Parliament 55 *Edw.* III. which Enacts, That none be put out of his Franchiſes or Freeholds, unleſs he be duly brought in to Anſwer, and forejudged of the ſame by Courſe of Law; and if any thing be done to the contrary, it ſhall be judged for none: And if the Peers enjoy their Honours under the Security of the ſame Laws they hold their Eſtates, as it is moſt evident they do, then this Law has made the Proceedings void, unleſs it can be ſhewn that the Houſe of Peers ſince this Act hath ſome Authority given them to warrant this Vote, which hath not yet been pretended to, otherwiſe than by the Precedents cited by Mr. Attorney; to which I ſhall give an Anſwer preſently; and to ſay that the Demurrer is a Confeſſion, that there is a Judgment *Secundum Legem & Conſuetudinem Parliamenti*, I never heard that a Demurrer was a Confeſſal of more than Matters of Fact well pleaded, and not of any Matters of Law in the Judgment of the Court, and confeſſeth not the Law by it againſt himſelf, *Plowd.* 85. 5 *Rep.* 69. *Burton*'s Caſe; and, I preſume, neither Mr. Attorney, nor Sollicitor, who made this Objection, do think that: Whether this be a Judgment according to Law and Cuſtom of Parliament, is Matter of Fact: then for the Precedents cited by Mr. Attorney, of the Earl of *Pembroke*, the Earl of *Stafford*, the Earl of *Torrington*, and the Lord *Mohun*'s Caſes, which are all Petitions for Trial, ſitting the Parliament, I think no Man who heard them can judge that they any ways warrant this Caſe or come up to it; for a Peer, indicted for Treaſon or Felony, can no ways wave his Trial by his Peers, 3 *Inſt.* 30. and therefore if he be deſirous to be tried ſitting the Parliament, altho' the Peers be during the Time of Parliament Judges of the Offence, 4 *Inſt.* 23. it is decent and uſual for him, to apply to them by Petition for ſuch Trial; but by it he doth not ſubmit his Title to Peerage to their Determination; for That, he aſſerts, he is entituled to by his Petition. Neither is the King, I think, bound by their Order, be it what it will, on ſuch Petition; for the King may chuſe whether he will appoint a High-Steward for the Trial, and without ſuch an Appointment the Offender cannot be tried, 3 *Inſt.* 31. And therefore 'till a Precedent be form'd, that on ſuch Petitions for Trial, the Petitioners have been voted no Peers, I cannot be of Opinion, that this Order or Judgment is *Secundum Legem & Conſuetudinem Parliamenti*, which hath its Foundation built on Uſages and Precedents; and where there is no Precedent to be found, it may warrantably be concluded, there is no ſuch Law or Cuſtom of Parliament. Then as to the Precedent of the Lord *Mountjoy*'s Caſe, cited by Mr. Attorney, relating to the Clauſe in his Patent for Precedency, who was created a Baron, 5 *Inſt.* 3. *Caſe*, *Pri.* it is nothing to the Caſe before us; for it is plain, tho' the King by his Prerogative, at the Common Law, might give Precedency to his Subjects as he pleaſed, yet that Prerogative is now bound by the Stat. of 31 *H.* VIII. *Ca.* 10. and if any Queſtion be mov'd in Parliament for the Privilege or Precedency of a Lord in Parliament, it is to be decided by the Lords in Parliament, and ſo it is expreſly reſolved in the 4 *Inſt.* 363. And for the Lord *Preſton*'s Caſe, I know not how it comes to be made uſe of for a Precedent of determining Peerage, who had no Creation under the Great Seal, nor ever was a Lord: His inſiſting on the pretended Patent, produced by him, being a high Miſdemeanor bordering on High-Treaſon; for which he was ordered to be preſented as a Criminal, in a Courſe of Law; and for *James Piercy*'s Caſe, it was a Caſe of Privilege, of which there is no Queſtion but their Lordſhips have a Juriſdiction, his Petition being to the Place in the Houſe of Lords of the Earl of *Northumberland*, and ſubmitting to them his Pedigree, and Title by Deſcent to that Earldom, in order to reſtore him to that Place; and after ſeveral Trials at Law had againſt him, and the Matter determined in a Courſe of Law, on ſolemn Hearing at the Bar of the Houſe on both Sides, on Depoſitions taken in the Cauſe, agitated in inferiour Courts, they voted him an Impoſtor*, which is very far from being a Precedent of their Lordſhips Original determining Right of Peerage, which are all the Precedents which have been cited, and unto which I truſt that I have given full Anſwer; and therefore this Order, here pleaded, being without a Precedent, I am of Opinion, for the Reaſons I have given, that the Indictment ought to be abated.

Holt, the Chief-Juſtice, held the Plea good, the Defendant having pleaded the Creation of the Lords his Anceſtors, and a plain Deſcent under them: And for the Earldom, that *Banbury* was averred to be in *England*, he ſaid, it was needleſs, the Creation being under the Great Seal; the Great Seal of *England* being only peculiar to *England*, for thereby the King acts as King; and had the Grant been made before the Conqueſt of *Ireland*, without Doubt it had been a good Grant; and the Conqueſt of *Ireland* cannot alter the Law of *England*; beſides, it would be a foreign Conſtruction, to intend *Banbury* in *Ireland*; and a Plea ſhall not be made bad by ſuch a Conſtruction.

And that the King doth grant Honours in *Ireland*, under the Great Seal of *England*, is by his abſolute Prerogative, and therefore there muſt be Special Words in the Patent, to ſhew that it is an *Iriſh* Title; and Patents, as well as Acts of Parliament, extend not to *Ireland*, unleſs it be ſpecially named; but for *England*, they be without any ſuch meaning. And he ſaid, That before *Edward* the Third's Time, there were but Two Titles of Honour, Earls and Barons, and the latter were created by Writs, by being called to the Parliament; there were alſo Barons by Tenure, and after, in *Richard* the Second's Time; they came to be created by Letters Patent, and it was anciently an Office of great Dignity, as alſo of Truſt, for the Defence of the Kingdom; and they were called *Comites a Societate regis*, 9 *Rep.* 49. and being an Office, might be intailed within the Statute *de Donis*, and they had formerly large Poſſeſſions; and for the Relief of an Earl, was 100 *l.* becauſe he died ſeized *De integro Comit'*. 1 *Inſt.* 83. But the Eſtate and Office is now vaniſhed, and nothing but the Dignity, or Title remains; and in theſe Letters Patent of Creation, in *Henry* the Eighth's Time, the Words to have *Vocem & Sedem in Parliamentis & Conſiliis noſtris* were added; but before that Time they were not put in theſe Letters Patent; but he became a perfect Peer by the Letters Patent without them: And as to the Objection, that the Defendant had not pleaded that he was *unus Parium hujus Regni Angliæ*, he ſaid, the Plea was only pleaded as *Miſnomer*, in Abatement of his Name; and all one with his Chriſtian Name, and he was to be named by it; but by this Plea he pleaded no Privilege of Parliament, and therefore need not plead that he was *unus Parium*, 6 *Rep.* 53. 8 *Hen.* VI. 9, 10. nor to have concluded his Plea with *verificare per Recordum*, or had a Writ out of Chancery to certify the Truth of this Plea; the Book of 22 *Aſſ. Pl.* 24. he agreed it to be Law, but miſunderſtood; for he had not in that Plea laid a Foundation in his Anceſtor's being made Lord; and produc'd a Writ to aſcertain that Matter of Record: There can be no Trial of it, nor Plea of *Nul Tiel Record* to it. But notwithſtanding the Matters of Record are ſo aſcertained, yet the Matters of Fact alſo pleaded are iſſuable, and to be tried; and therefore in the Letters Patent, being here pleaded, there can be no Iſſue taken of Earl, or not Earl, but only on the Matter of Fact here pleaded: So the Concluſion of the Plea with a *Parat' eſt verificare*, is proper, and as it ought to conclude; and he held the Replication ill, and that the Order of the Houſe of Lords therein pleaded, did no ways preclude the Defendant of his Title and Name of Honour; and that for theſe Reaſons: *Firſt*, Becauſe this Determination was not a Judgment, in the Court of Parliament, which conſiſts of King, Lords, and Commons, 4 *Inſt.* 1. *Dyer*, 60. *Compton*'s *Juriſdiction of Courts*, 1. And though the Judicial Power of this Court be exerciſed by the Lords Reply, yet the Writs of Error are returnable *Coram Nobis*, and the Judgment is always *per Cur' Parliamenti*; but the Determination here is only by the Lords Spiritual and Temporal, which excludes the King; for where the King's Authority is not expreſſed, or implied, the King is excluded, and the Lords have a double Capacity; and by the Title of their Orders, we are to diſtinguiſh what Capacity they act by: When the Determination is by them, as Lords Spiritual and Temporal, they act as a Houſe; but when they act as Judges, and give Judgment, the Stile is, *per Cur' Parliamenti*, and their Journals are not the Records of Parliament, *Hob.* 110. *Secondly*, This, as to the Determination of the Defendant's being an Earl, is as an Original Cauſe, which the Houſe of Peers being the Dernier Reſort, have no Connuzance of ſuch Cauſes, being mixed with many Matters of Fact which the Houſe of Peers cannot try; and by Reaſon of their Supreme Juriſdiction, are not to be troubled with; and therefore no Writ of Error lies in Parliament for an Error in Fact out of this Court, though it doth on all Judgments here for any Error in Law: But for any Error in Fact, in this Court, the Writ muſt be *Coram Nobis*, and we are to correct our own Judgments for ſuch Errors, which the Commons could not their Judgment for Errors in Fact, by any ſuch Writ to be brought before them; but the Writ of Error is to be brought into this Court; and he ſaid, he knew not any other Reaſon of the Difference, but the Dignity and Supremacy of the Court of Parliament; that it was below that Houſe to be troubled with Facts, and this leſſened not the Juriſdiction of the Lords, it being below their Juriſdiction to hold Plea of it; and ſhould they try Cauſes Original, the Party againſt whom Sentence is given would loſe the Benefit of his Appeal; for from their Determination no Appeal or Review lies; and therefore in the Earl of *Macclesfield*'s Caſe, it was held, that no Writ of Errror lay in Parliament, 'till he had firſt brought a Writ of Error in the Exchequer-Chamber; and this Caſe differs not from Common, the Dignity being created under the Great Seal, and the Deſcent of it directed by Rules of Law: And if the De-

* This *James Piercy* was a Trunk-maker in the *Strand*, and publiſh'd his Caſe and Pedigree in about 24 Pages in Folio: One of his Arguments to make you believe him a true Deſcendant of the *Piercys*, was, *That he was born with a Mole on his Body* (as other of the *Piercys* had been) *like a half-Moon*. Vide his Caſe, P. 16.——The Creſcent being the Creſt of the *Piercys*, Earls of *Northumberland*.

fendant

fendant had been obſtructed in the Enjoyment of his Dignity, his Remedy had been by Petition to the King, *Standford, Prer'* 72. *Thirdly*, There was no Plea depending in Parliament, containing the Right of Earldom; for the Petition aſſerts, he was an Earl, and the Judgment is, that he hath no Title to the Honour; and every Judgment muſt be proportionable to the Demand: And it is plain in this Caſe, they could not have given Judgment for him, to have had the Earldom, and therefore could not by it have him out of it. *Fourthly*, Here is no Judgment given, that he be excluded from the Honour, only that the Petition be diſmiſſed, which is only a diſcharging the Petitioner; and every Suit muſt have its proper Judgment, 2 *Car.* 284. and no Man's Inheritance was ever determined *Secundum Legem & Conſuetudinem Parliamenti*. And my Brother *Gregory*, and my Brother *Eyre*, being of the ſame Opinion, Judgment by the whole Court was given for the Defendant.

And the Defendant remains untried to this Day.

See *Salkeld*'s Reports, Vol. II. Pag. 509, & ſeq. Alſo *Carthew*'s Reports, Pag. 297. *Comberbach*, Pag. 273. and *Skinner*'s Reports, Pag. 336, and 517. where this Caſe is reported at large.

XLVII. *The Trial of* William Anderton, *Printer*, June 3, 1693, *before the Lord Chief-Juſtice* Treby, *Baron* Powell, *Sir* John Fleet, *Knt. Lord-Mayor*, *and Sir* Salathiel Lovell, *Knt. Recorder*, *at the* Old-Baily, *for High-Treaſon.* 5 W. & M.

[As Printed in the Seſſions-Paper of that Time *.]

ON *Thurſday*, *June* 1, 1693, in the Afternoon, *William Anderton*, Printer, was brought to the Bar, and an Indictment of High-Treaſon was read againſt him; for that he did Compoſe, Print, and Publiſh, Two Malicious, Scandalous, and Traitorous Libels. The Firſt entitled, *Remarks upon the preſent Confederacy, and late Revolution in* England. The Second, entitled, *A* French *Conqueſt, neither deſirable nor practicable.*

After the Indictment was read, the Priſoner pleaded, *Not Guilty*; and the Court, upon his Requeſt, ordered him a Copy of the Pannel, and gave him till *Saturday* to prepare for his Trial: Accordingly on *Saturday* Morning, about Nine of the Clock, he was again brought to the Bar, and the Gentlemen that were ſummoned to appear to try the Iſſue were called over, and their Appearances recorded, and the Priſoner had Liberty to make his Exceptions, according to the Preſcription of Law, which he did, to the Number of *Thirty-Five*, being the full Number, *&c.*

The Jurors ſworn, were theſe Gentlemen whoſe Names follow, *viz.*

Criſpe Grainge,	*Thomas Ramidge*,
Joſeph Bliſſet,	*Robert Longland*,
Joſeph Bowler,	*Ralph Hutchinſon*,
John Hynde,	*John Outing*,
Robert Hinde,	*Samuel Freebody*,
Simon Smith,	*Moſes Colwell.*

Then the King's Counſel opened the Nature of the Matter of Fact contained in the Indictment, telling them, That the Offence that was contained in it was High-Treaſon in the higheſt Degree, viz. The compaſſing and deſigning the Death of the King and Queen; and there muſt be ſome Overt-Act to diſcover the Intention of the Man; and that which made the Overt-Act in this Caſe, was in Compoſing, Printing, Publiſhing, and Diſperſing of Two Treaſonable Libels, as they had heard read to them; in which there was contained the rankeſt, vileſt, and moſt malicious Treaſons that ever could be imagined by any Man to be put into Paper; for he had no other Name for the King, but the *Prince of Orange*; and the Deſign of it was merely to incite all the King's Subjects to ſtir up, and raiſe War and Rebellion againſt him, and to reſtore the late King *James*.

After which, the Evidence for the King were called and ſworn: The firſt of which was Mr. *Robert Stephens*, Meſſenger of the Preſs, who declared, That he had known the Priſoner for above theſe two Years to be an Offender againſt the Government, in Printing Seditious Libels, but never could tell where he worked, 'till on the ſecond Day of *May* laſt, ſpying Two Journeymen Printers, who he had miſſed from publick-Printing-Houſes this Half-Year, he followed them, and ſaw them go exactly into the Houſe of one *Skudamore*, (where the Priſoner was found), and where he ſuſpected they worked privately: So having got the Beadle, and another Perſon or two with him, to aſſiſt him, he went to the Door, leaving the others a little Way off, to avoid any Suſpicion, *&c.* When he came to the Door, he firſt aſked, What Lodgers they had; then turning his Head aſide, he ſaw the Priſoner's Mother in the Yard, and ſhe well knowing Mr. *Stephens*, ſhe immediately cryed out, *Thieves*, and came up to him, (her Daughter, the Priſoner's Wife, being with her, fell upon him, and tore his Hair off his Head, crying out *Murder*; at which Time the Priſoner came out of the Houſe, and fell upon him, and abuſed him in a very uncivil Manner, telling him, he ſcorned to be a Subject to *Hook-Noſe*. Then the Beadle and the other Perſon came to his Aſſiſtance, and took the Priſoner, but not without a great deal of Trouble.

Mr. *Stephens*, and the others who were with him, made a particular Search, and in a Chamber, which the Landlady ſaid was the Priſoner's Lodgings, and that he went by the Name of *Williams*, and a Lapidary by Trade, and where he owned he had been aſleep. There they ſaw him ſhoving a Bed, which run upon Wheels, cloſe up againſt a Wall, which gave Suſpicion to Mr. *Stephens* to remove it; which having done, there he found a Door which opened with a Latch, and entering a Room, there he found a Printing-Preſs, Letters, and all other Materials fit for the Trade; and ſearching further, he found, in an old Trunk, a great Quantity of Libels, and libellous Pamphlets, one entitled, *A Caution to the Navy*; Another, *An Hiſtorical Romance upon the Wars*; A third, *A Second Letter to the Lord Biſhop of* Saliſbury; and there was an *Errata*, and an *&c.* found ſet in the Preſs, the very ſame that were in the Book, called *Remarks upon the Confederacy*; and in the Chamber where he lay, there was a Deſk, (which Mr. *Stephens* knew well to be the Priſoner's, becauſe he had ſeized it before) in which Deſk there was found the Two Libels, (as in the Beginning of the Trial) and divers others of the ſame Sort, which Deſk the Priſoner owned to be his. Theſe they ſeized and ſecured, having firſt put their private Marks upon the Libels, that they might know them to be the ſame, and conveyed them with the Priſoner to the Lord Chief-Juſtice *Holt*'s Chamber in a Coach; and being alighted at the Door, whilſt Mr. *Stephens* was looking Money to pay the Coachman, the Priſoner made his Eſcape through *Serjeants-Inn*, but was ſoon overtaken by the Porter: He was examined by my Lord, and committed to *Newgate* for High-Treaſon; this was fully and clearly proved againſt him on the King's Side, and the Libels were ſome Part of them read in Court, in which was found Abundance of baſe, vile, ſcandalous, and traitorous Expreſſions, enough to make any honeſt *Engliſhman* to hate and abominate all ſuch traitorous, diſaffected Principles. That Libel, called *A Caution to the Navy*, which was taken in the Printing-Room, was proved to be corrected by the Hand of the Priſoner; and thoſe Letters that were in the Form, upon which the *Caution to the Navy* was printed, was alſo proved to be printed with one and the ſame Letter and Character, *&c.* as the Libels he was indicted for.

Then the Priſoner made his Defence, telling the Court, That the Matter that was given in Evidence againſt him, was not ſufficient to make it an Overt-Act, therefore could not be adjudged High-Treaſon, praying, That he might have Counſel allowed him to plead it, being a Matter of Law. To which he was anſwered by the Court, That the Queſtion was, Whether he printed thoſe treaſonable Books? Which plainly appeared that he did, for they were all found (with the Preſs alſo) upon him, and his ſo printing of them was an Overt-Act in the Judgment of the Law; therefore the Perſon ſo offending muſt be guilty of High-Treaſon; deſiring him, if he had any Witneſſes, to call them; to which he replied, That he had none, but deſired that he might have Leave to put the Jury in Mind of two or three Things, which in general was the Opinion of my Lord *Coke*, as to Matter of Law in this Caſe, who ſays, *That it muſt be done with the Intention of the Mind, and that it muſt be ſome Injury done to the King's Perſon, by buying a Gun, or Gunpowder, or Poiſon, or the like, before it can be accounted an Overt-Act*; and there was no ſuch Thing proved againſt him. To which the Court replied, That in primitive Times, before Printing was invented, Writing was found to be an *Overt-Act*; and made High-Treaſon; therefore Printing was more manifeſtly an Overt-Act: And there was no Room for any Counſel to be aſſigned him, for there was no Matter of Law for them to plead to, and therefore deſired him not to give the Court any unneceſſary Trouble. Adding, That it was the Opinion of the whole Court, that he had no Grounds for ſuch a Plea; but if he had any Thing to offer that might be any Ways advantageous to him, they would very patiently hear it.

Then the Lord Chief-Juſtice *Treby* ſummed up the Evidence to the Gentlemen of the Jury, telling them what dangerous Conſequence ſuch treaſonable Libels were of; and that it was as great and malicous a Treaſon as ever could be imagined; but eſpecially when conſidered to be done againſt ſo good a Prince, who had done ſo much for this Nation, with ſo great a Mind, and ſo good an Intent. This was done only to exaſperate and to ſtir up Sedition and Rebellion amongſt us; therefore, if they did believe what the Witneſſes for the King had ſworn, to be ſufficient Evidence, that he printed the Libel, then they muſt find him guilty, otherwiſe acquit him.

Then the Jury having withdrawn for about *Three Hours Time*, they brought a Verdict, That the Priſoner, Mr. *William Anderton*, was guilty of High-Treaſon †.

* The Trial of *Anderton*, as printed in the Seſſions-Paper, as alſo his Trial publiſhed by his Friends, are both here inſerted, for the *Reader*'s Satisfaction, and they left to make their own Obſervations on them.

† The Author of *a Letter concerning Sir* William Whitlock's *Bill for regulating of Trials in Caſes of High-Treaſon*, written 1693, Page 1. ſays; "What good *Engliſhman* "is not afflicted for the Death both of *Eſſex* and *Raleigh?* Can any Man that knows our Laws, think Sir *Henry Vane* was fairly dealt with? That *Plunket* ought to have "been tried twice? *Sidney* executed upon Similitude of Hands, and one Witneſs? Sir *Thomas Armſtrong* without a Trial, before the Outlawry compelled his coming "in? *Aſhton* upon preſumptive Treaſon? And *Anderton* againſt the plain Senſe of ſo many Statutes? The Blood of theſe, and many more, cry for Vergeance, and admoniſh us to provide againſt ſuch Extravagancies hereafter. *Colledge* and *Corniſh* call aloud for ſuch a Bill. Had ſuch a Statute been in force, could the great Lord "*Ruſſel* have died for only endeavouring to prevent the wild Attempts of others; and becauſe Sir *Thomas Armſtrong* had viewed the Guards? But it is needleſs to ſet down "the ſeveral Inſtances in other Reigns, when the Trials under this afford but too pregnant Reaſons to conclude, the Judges very untoward Counſel for the Priſoner, and "that Jurymen may be biaſſed by Piques and Animoſities; and alſo that well-meaning Men of a Jury ought to hear the Law ſtated by ſuch of the Robe as are not in the "Pay of the Crown; not only becauſe the Bench too often prevaricates, but becauſe the Priſoners are often wearied out, as the great *Raleigh* was, with the clamorous "Harangues of the King's Counſel, and ſo drop their Defence, when their Lungs (which are not ſo well breathed as thoſe of Pleaders) fail them."

The

The last Day of the Sessions he was brought to the Bar, and asked, What he had to say, why Sentence should not pass upon him according to Law? He read *a Petition*, wherein he desired the Court would please to allow him Counsel to plead to a Point of Law; The Court told him, there was no Matter of Law did arise. Then he desired, that he might have a longer Time than the rest; to which he was answered, That it was in the Power of the Queen, and not in the Court.

Friday, June 16, 1693, he was executed.

Mr. *Samuel Smith*, the Ordinary, gives this Account of Mr. *Anderton*, in his Account of the Behaviour of the Criminals.

William Anderton, Printer, condemned for High-Treason, in composing, printing, publishing, and dispersing malicious, scandalous, and traitorous Libels: The Design of it being to incite the King's Subjects to War and Rebellion against him, and to restore the late King *James*. He refused to come at any Time to the Ordinary; whereupon he went to the Chamber of the said *Anderton*, and offered to pray with him, but he said, *That he had such came to him, who gave him Contentment:* And after a second Offer to pray with him, he refused it. The Ordinary told him, That he ought to take Care, that no Man might extenuate his high Crimes, nor flatter him with false Hopes of Heaven, Men's Hearts being very prone to deceive themselves in that Respect; upon which *Anderton* said, *Leave me to myself, I desire not to be further solicited or exhorted by you.* Upon this the Ordinary withdrew himself.

William Anderton, for High-Treason, and *John Dudley*, for Clipping, were drawn on a Sledge to *Tyburn*, and were first executed. The Right Worshipful the Sheriffs being present, *Anderton* desired that his Brother, and a Minister his Friend, might come into the Cart, which was granted.

The Minister only prayed for him in the Office of Visiting the Sick: When he had finished, and went out of the Cart, the Ordinary exhorted *Anderton* and *Dudley* to beg of God, that they might be Examples of true Repentance, and to warn the People by their sad untimely End, but they did not; therefore the Ordinary commanding Silence, spoke thus: Be persuaded by the Sight of these dying Persons, not to contrive any thing against the Government of this Kingdom; God will bring it to Light, and in Justice punish it; and exhorted the People not to prophane the Sabbath, which all Criminals bewail when they come to die publickly, as that Sin which brings on all other Crimes. *Anderton* told the Spectators, that his Sentence was very hard and severe. I told him, that he had endeavoured to overthrow the established Government. He said, that he forgave his Judges. I replied, that they needed not his Forgiveness, for they were satisfied in their Consciences that they had acted justly. Then I prayed with them, and they had a considerable Time to pray for themselves, which they did fervently. *Anderton*'s Carriage was with much Confidence. There was a Paper came to the Sheriff's Hand for the suspending the quartering of *Anderton*. He thought it to be a Reprieve, which did much affect him with Thanksgiving to God; but understanding it was only that his dead Body should be delivered to his Friends, he did not acknowledge that as any great Favour. After they had prayed for themselves, the Ordinary committed them to God's Mercy, with a short Prayer at last: So praying again for themselves, they gave a Sign, when they expected to be executed, and the Cart thereupon drew away.

The TRIAL of William Anderton, *Printer, at the* Old-Baily, *before the Lord-Chief-Justice* Treby, *Mr. Justice* Powell, *Sir* John Fleet, *Knight, Lord Mayor, and Sir* Salathiel Lovel, *Knight, Recorder of* London. June 1, *and* 3, 1693, 5 Will. & Mar. *for High-Treason* *.

MR. *William Anderton* knowing himself to be mortally hated by some Persons, had absconded for a considerable Time, as it had been the hard Fortune of divers great and good Men to do in these difficult Times; but being betrayed to Mr. *Robert Stephens*, Messenger of the Press, and his sworn Enemy, he was apprehended on the second of *May*, this present 1693; and *Stephens*, not content with his Person, plainly plundered the House, carrying away Goods to a considerable Value, which there was no colour of Law for him, or any Man else to seize; and this, I suppose, might be one great Motive to make him swear so desperately at the Trial, that he might take away a Man's Life, who otherwise might come upon him for robbing him of his Goods; the Booty secured, away he goes in Triumph with his Prisoner, to my Lord-Chief-Justice *Holt*, where he railed against him in a very indecent Manner; the Judge was very calm, and said very little to the Matter; but, upon the Accusation, committed Mr. *Anderton* to *Newgate*, not for High-Treason, as is falsely alledged; that Judge knew the Law better, and, I believe, is not in himself so very forward to over-strain it. Whilst he stood thus committed for Misdemeanour he was bailable; and accordingly very sufficient Bail was offered for him; but *Aaron Smith*, who wisely weighs what Advantage is to be made of every Prisoner, and considers not only the Person himself, but the Interest he is engaged in, and the Friends he may be supposed to have, thought too few Guineas were offered; and therefore still kept off the Bail, endeavouring to make a better Market; but while Things hung thus between the Bail and the Bail-master, on a sudden the Controversy was ended by the coming of a fresh Warrant upon the former, which committed the Prisoner for High-Treason.

The Trial began *Thursday, June* 1, but respited till the *Saturday* following, (*June* 3,) that this Scene might be acted with the greater Solemnity; Mr. *Anderton* being brought to the Bar, was arraigned, and pleaded Not Guilty, and made it his Request, That he might have a Copy of his Indictment; but it would not be granted. The Crime laid to his Charge was,

The Composing, Printing, and Publishing, Two malicious, treasonable Libels: The First entitled, *Remarks upon the present Confederacy and late Revolution in* England: The Second, *A* French *Conquest, neither desirable nor practicable.*

The principal Evidence against the Prisoner was *Robert Stephens*, the Messenger of the Press, who made Oath, That coming to *Scudamore*'s House, where the Prisoner lodged, and asking what Lodgers they had, he saw the Prisoner's Mother in the Yard, who crying out Murder, the Prisoner came out of the House, and fell upon him; and that at the Time of Mr. *Anderton*'s Apprehension, he did in Words disown the Government, and call'd King *William* Hook-Nose, not submitting himself: That he took at the said House an old Trunk fill'd with seditious Papers and Pamphlets, and that he had seen the Trunk formerly, and knew it to be Mr. *Anderton*'s, and that he also found a Desk, and took out of the said Desk Forty or Fifty of a sort of *The Remarks*, and *French Conquest* †, and that he saw the Prisoner shove up a Bed, which run upon Wheels, behind which was a Door, which he open'd, and there found a Printing Press, Letters, and other Materials proper for that Trade; that he also found an *Errata*, with an *&c.* set in the Press, the very same which he believed were in the Book, called *Remarks upon the present Confederacy.*

Hooper, the Beadle of Stationers-Hall, seconded the aforesaid Testimony, as also the Constable and his Beadle; they also alledged Forty or Fifty of the *French Conquest* to be there ‡. Besides *Stephens*, the *Constable*, and the *Beadles*, there were also Two Printers sworn, *viz. Roberts* and *Snowden*, (a Dissenter, to whom *Anderton* was some Time an Apprentice) the Substance of whose Evidence was, That they had seen the Characters in the Hall, together with the *&c.* and that they did believe it was the Letter that printed that Book, (*i. e.* the Book then shewed in Court) as also, That the two Books were printed with one and the same Letter or Character ‖. Another Witness made Oath, That about three Quarters of a Year before, he had sold the Prisoner Paper, by the Name of *Williamson.*

The Prisoner, with a great deal of Calmness, and Clearness made appear the Insufficiency of the Evidence: He peremptorily denied any such Books to have been there, as sworn to, tho' he own'd the Desk; and he used an Argument to convince the Bench of the Truth of what he said, drawn from the very Evidence given against him, *viz.* That the Desk was small, and not able to contain half so many Books as were sworn to be taken out of it; and for Proof, desired that the Desk might be brought into Court, for the Jury's Satisfaction; but this Request was not comply'd with, and the Matter put off, saying, The Number of Books was only Matter of Supposal. But then from this false Supposition of the Proof of Matter of Fact, there arose Matter of Law, *viz.* Whether Printing were Treason? And in consequence hereof, Whether it were within the Purview of the Statute of the 25 *Edw.* III.? To this, the Prisoner desired he might have the Benefit of Counsel, and pleaded his Right to it, urging not only the Privilege of every *Englishman*, but that it was the Practice of all our Courts of Justice, and that no Man was denied Counsel where any Point of Law arose; and instanced in the Case of *Sidney*, and others, to whom the Judges freely and readily assigned Counsel as to Matter of Law, and own'd it to be their Right. But the Court peremptorily denied to him, what was (as the Learned in the Law tell me) never denied to any Man before, Counsel as to Matter of Law. Being thus shamelessly over-ruled, he was constrain'd to be his own Counsel, and deliver'd in the following Plea.

Mr. Anderton's *PLEA at the* Old-Baily.

My Lord,

I HAVE a few Things, humbly to offer to your Lordship's Consideration, as to this Indictment.

* Taken chiefly from a Quarto Pamphlet, entitled, *An Appeal of Murder*, &c. wrote by Mr. *Grascomb*, a Nonjuror. But Mr. *Anderton* was assisted in his Defence by Mr. *Thornbury*, a Counsellor at Law, who, it's suppos'd, drew his Plea, Petition, *&c.*

† As to the latter of these, it is now certainly known that he had no Hand in it, and that it was printed at a Press which he never saw, and by Persons with whom, for a long Time, he had no Communication: For the Government had at that Time in their Custody those Persons, who knew when and where it was printed, and (as it was said) had made a Discovery of all, perhaps, of more than they knew. The Papers of that Sort taken upon the Prisoner were sent to him the Day before he was seized: And some have a vehement Suspicion, that it being resolved he should be taken the next Day, those Pamphlets were sent before-hand, that something might certainly be found upon him; but his Innocence in that Matter hath since been made evident to all the World, by an irrefragable Testimony; for this *September* Sessions at the *Old-Baily*, *Price*, in open Court, made Oath, That he, and the Prisoners then at the Bar, *Newbolt* and *Butler*, printed the *French Conquest*. *Appeal of Murder*, pag. 6.

‡ It is certain, there was not the fourth Part of so many in the House, which were sent him the Day before, and which the Government itself now (if it did not then) well knows were not printed by him. And yet after all this Multitude they were content to fall to one of each, that they might be particularly sworn to; and when Mr. *Constable* was asked, How he knew those to be the Books, and was desired by the Prisoner to read the Titles of those Books whereof he accused him, truly it appear'd, that the Gentleman had been bred to no such dangerous Things as Writing or Reading. Now could a more unquestionable Witness have been produced to printed Books, and their Titles, than a Man that cannot read? But for a Help at a dead Litt, it was said, That he had made *his private Mark* on the said Books; but then it ought to be consider'd, That his *private Mark* was made to the Two Books at the Lord-Chief-Justice *Holt*'s Chamber, which *Robin Stephens* produced out of his Pocket, when the Prisoner was brought to be examined. Now what did his Mark, set on Two Books at the Lord-Chief-Justice's Chamber, which were all the while before in another Man's Custody, signify to prove that those were the Books, which were about four Hours before taken out of a Desk in St. *James's?* *Robin Stephens* might have produced what Books he pleased, and in all Likelihood, this Man would have set his *private Mark* on them; but if he would have been sure, he ought to have set his *private Mark* at the Time of their being taken out of the Desk. See *An Appeal of Murder*, Pag. 11 and 12.

‖ Now if this Evidence be true, it ought to have acquitted him; if it be false, it ought not to have hurt him. For the Government well knows where and by whom one of the Books was printed, and that it was not printed by Mr. *Anderton*, nor had he any manner of Hand in it, or any Communication at that Time with those Printers; and if both the Books were printed with the same Letter or Character, then I think it is a pretty fair and clear Inference, That he printed neither of the said Books, and consequently ought, upon this Evidence, to have been discharged. But be the Matter true or false, what signifies *believing* in this Case? Is one Man to be hang'd for another's *believing?* Malice is put to its Shifts, when without any Colour of legal Evidence it is forced to *believe* a Man out of his Life. But if such Evidence as this shall be look'd on as good and satisfactory in Matter of Life, I think the whole Society of Printers are deeply concern'd in it, and that they are all in very dangerous Circumstances; for I am assured by a very understanding Printer, that there is not a Printing-House in Town, but hath of the same sort of Letter or Character, so that upon such an Oath as this, any or all the Printers of the Town might have been taken, and whom they thought fit hang'd. For there is none of them but had Characters as suitable to the Book, as that which was sworn to; and if it had been seized, and thus sworn to, they were as liable to be hang'd as *Anderton*. At this Rate the Government need not give themselves the Charge of a Messenger of the Press, nor the Trouble of such frequent Searches; but as soon as any seditious or treasonable Pamphlet comes abroad, it is but going to the next Printer's, and seizing his Letter, and having found some of the same Sort of Character, to get a Couple of Rattle-headed Fellows to swear it, and hang him; and thus they may pick and chuse what Printers they please to hang. Was ever such a wise Oath made by Two Printers? But *Snowden* was made Choice of, for his notoriously known Malice against the Prisoner. See *An Appeal of Murder*, P. 13 and 14.

1. As to the compaſſing, or imagining the Death of the King and Queen, my Lord *Coke* ſaith expreſsly in his 3 *Inſt. p.* 6. That it is the very Rule of the Act, that *Actus non facit Reum, niſi Mens ſit Rea*; and if the ſaid Act be not within the expreſs Words of the Act, then by Force of a Clauſe hereafter, *viz. Et pur ceo que pluſers auters ne*, it cannot be adjudged Treaſon, until it be declared Treaſon in Parliament; which is the Remedy which the Law-makers have provided in that Caſe.

2. As to the Levying War, *he ſays*, *p.* 9. That a compaſſing, or conſpiring to levy War is no Treaſon; for there muſt be a levying War in *Facto*. *Pog.* 10, *he ſays*, In citing the Lord *Dyer*'s Caſe, in Sir *N. Throgmorton*'s, that during the Life of the Queen, viz. *Eliz.* a Conſpiracy to levy War was High-Treaſon, tho' no War levied: But when *Bradſhaw* and *Burton*, and others, were indicted of High Treaſon, for conſpiring to make War, it was reſolved by all the Judges, that it was no Treaſon within the 25 *Ed.* III. for the Words in this Law are *Levie Guerre:* An actual Rebellion, or Inſurrection, is a levying War within this Act; as if any with Strength and Weapons invaſive and defenſive, doth hold and defend a Caſtle or Fort againſt the King and his Power; that is levying War within this Statute.

3. Adhering to the Enemies of the King and Queen. This, my Lord, in the ſame *p.* 10. he likewiſe explains; *viz.* in giving Aid and Comfort to the King's Enemies within the Realm, or without, Delivery or Surrender of the King's Caſtles, or Forts, by the King's Captains thereof, to the King's Enemies within the Realm, or without, for Reward. This, *ſays he*, is adhering to the King's Enemies, and declared Treaſon by this Act: And for this, my Lord, he cites ſeveral acknowledged Authorities and Acts of Parliament.

4. As to the Proof of theſe, or any of theſe Particulars, the ſaid Lord *Coke*, p. 12. explaining this Branch of the Statute, *Et de ceo provablement ſoit attaint per overt Fait per gens de lour Condition*, ſaith thus; which, Gentlemen of the Jury, I beg of you take particular Notice of. In this Branch, ſaith he, four Things are to be obſerved; but I ſhall only take Notice of three, firſt, this Word *Provablement*, probably, *i. e.* upon direct and manifeſt Proof, not upon conjectural Preſumptions, or Inferences, or Strains of Wit; but upon good and ſufficient Proof. And herein the Adverb, *Provablement*, probably, hath a great Force, and ſignifieth a direct and plain Proof; which Word, the King, Lords and Commons in Parliament did uſe, for that the Offence was ſo heinous, and was ſo heavily and ſo ſeverely puniſhed, as none other the like; and therefore the Offender muſt probably be attainted; which Words are as forceable as upon direct and manifeſt Proof. *Note, ſaith he*, The World is not *Probably*, for the *Commune Argumentum* might have ſerved; but the Word is *Provably* be attainted: And *pag.* 26, he tells us, That Two Witneſſes are required, and I remember, *ſaith he*, no Authority in our Books to the contrary; and the Common Law herein is grounded upon the Law of God, expreſt both in the Old Teſtament and the New. *In ore duorum aut trium Teſtium peribit qui interficietur. Nemo occidatur uno contra ſe dicente Teſtimonium, M. Bract. Forteſ.* 1 *E.* VI. 5 *E.* VI. 11. *Secondly*, This Word *Attaint*, neceſſarily implieth that he be proceeded with, and attainted according to the due Courſe and Proceedings of Law, and not by abſolute Power, or by other Means, as in former Times hath been uſed. *Thirdly*, *Per Overt Fait*, *per apertum Factum.* This, *ſaith he*, doth alſo ſtrengthen the former Expoſition of the Word *Provablement*, that it muſt be *provably* by an open Act, which muſt be manifeſtly proved; and this manifeſt Proof he thus explains: As if, *ſaith he*, divers do conſpire the Death of the King, the Manner how, and thereupon provide Weapons, Powder, Poiſon, Aſſays with Harneſs, or ſending Letters to put this their Conſpiracy in Execution. Theſe, *Gentlemen of the Jury*, are the Expoſitions of the unexceptionable Lord *Coke*, whoſe Authority I the rather choſe to rely on, becauſe his Learning in the Law, and his Veracity in the Delivery of his Opinion, is univerſally acknowledged.

5. As to the Fact alledged in this Indictment, which is to prove the aforeſaid Crime, or otherwiſe the whole Indictment falls to the Ground; and that, my Lord, is Printing. Now the Queſtion is, my Lord, Whether Printing, as ſuch, can be conſtrued to be within the Purview of this Statute? And I humbly conceive not; becauſe the Statute of 1 *Mary* enacts, That no Act, Deed, or Offence, being by Act of Parliament, or Statute made Treaſon, Petit-Treaſon, or Miſpriſion of Treaſon, by Words, Writing, Ciphering, Deeds, or otherwiſe whatſoever, ſhall be taken, had, deemed, or adjudged to be High-Treaſon, Petit-Treaſon, or Miſpriſion of Treaſon, but only ſuch as be declar'd and expreſſed to be Treaſon, Petit-Treaſon, or Miſpriſion of Treaſon, in, or by the Act of Parliament made in the 25th Year of the Reign of the Moſt Noble King of famous Memory, King *Edward* the Third, or any other Declaration, or Matter, to the contrary in any wiſe notwithſtanding. Now, my Lord, the World well knows, that Printing was not practiſed in *England* till ſeveral hundred Years after the making of this Statute of 25 *E.* III. and therefore impoſſible to be expreſs'd, and conſequently not Treaſon. And it is likewiſe well known, that Printing was in Uſe in *England* long before the Reign of Queen *Mary*, and yet this Statute poſitively excepts it, as not being mentioned in that of 25 *E.* III. And my Lord *Coke*, *p.* 23. *ſays*, That before this Act of 1 *Mary*, ſo many Treaſons had been made, and declar'd by Parliament, ſince that of 25 *E.* III. ſome in particular, ſome in general, and in ſuch ſort penn'd, that not only the Ignorant, but the Learned were many times trapt and ſnared, and Treaſons made in one King's Reign were abrogated in another. So that the Miſchief before 25 *E.* III. of the Uncertainty what was Treaſon, and what not, became ſo frequent and dangerous, that the ſafeſt and ſureſt Remedy was by this excellent Act of 1 *Mary*, to abrogate and repeal all but ſuch as are ſpecified and expreſſed in this Statute of 25 *E.* III. By which Law, *ſays he*, the Safety of the King and his Subjects is wiſely and ſufficiently provided for in ſuch Certainty, as *nihil relictum eſt arbitrio Judicis.* And *p.* 21. explaining the Words, Semblable Treaſon, *he ſays*, In this Caſe the Judge ſhall not judge *a ſimili*, or by Equity, Argument, or Inference of any Treaſon, High, or Petit, for no like Caſe ſhall be adjudged Treaſon, High, or Petit, nor no other Caſe, though of as high, or higher Nature, ſhall be adjudged Treaſon, High, or Petit, as appeareth in the Caſe of Parricide. And *p.* 22. explaining this Branch, *Que n'eſt ſpecifie paramount:* This Word *ſpecifie*, *ſaith he*, is to be ſpecially obſerved; for it is as much as to ſay, particularis'd or ſet down particularly, ſo as nothing is left to the Conſtruction of the Judge, if it be not ſpecified, or particularis'd by this Act. And, my Lord, he breaks out into this Rapture, *A happy Sanctuary for Judges to fly to, that no Man's Blood, and Ruin of his Family, do lie upon their Conſciences againſt Law!* And if that the Conſtruction by Arguments *a ſimili*, or *a minori ad majus*, had been left to the Judges, the Miſchief before this Statute would have remained; *viz.* Diverſity of Opinions, what ought to be adjudged Treaſon, which this Statute hath taken away by expreſs Words. And the Statute, 1 *Mary*, doth repeal all Treaſon, *&c.* but only ſuch as be declar'd and expreſs'd in this Act of 25 *E.* III. wherein this Word, *Expreſſed*, is to be obſerved. And again, my Lord, on the Branch, *Tanque per D'evant le Roy & ſon Parliament.* By this, *ſaith he*, it is apparent, that any like Caſe, or other Caſe, ought to be declared by the whole Parliament; and ſo it was done by the whole Parliament in 3 *R.* II. and many other Acts of Parliament. Nay, *p.* 24, *he ſays*, that no former Judgment, Attainder, Precedent, Reſolution, or Opinion of Judges, or Juſtice, of High-Treaſon, Petit-Treaſon, or Miſpriſion of Treaſon, other than ſuch as are ſpecified, and expreſs'd in the ſaid Act of 25 *E.* III. are to be followed, or drawn to Example; for the Words are direct and plain, that no Act, Deed, or Offence, *&c.* ſhall be taken, had, deemed, or adjudged to be Treaſon, Petit-Treaſon, or Miſpriſion of Treaſon, but only ſuch as be declared and expreſs'd in the ſaid Act of 25 *E.* III. any Act, Statute, Declaration, or Matter to the contrary notwithſtanding. But now, my Lord, to come a little nearer to the Matter: How can bare Printing be deemed in Law an Overt-Act of compaſſing, or imagining the King's Death? (Which is the Treaſon alledg'd,) when 'tis ſo far from neceſſarily proving it, that it is ten times more natural to ſuppoſe that the Printer (whoever he be) prints for his Gain in his Way of Buſineſs, than out of any intendedly treaſonable Deſign. Beſides, in Treaſon Books, the Law ever look'd ſeverely after the Author, or Procurer, but very little, or not at all regarded the Printer as ſuch, being look'd on in Law as a mere Mechanick, till the Statute 13 and 14 *Car.* II. *c.* 33. which makes it an Offence, and allows the Puniſhment, which is for the firſt Offence, Diſability for following the Trade for three Years; and for the ſecond, a perpetual Diſability and a Fine, Impriſonment, or other corporal Puniſhment, not extending to Life or Limb. My Lord, the very Stile of the Act is, *An Act for preventing Abuſes in Printing Seditious, Treaſonable, and Unlicenſed Books and Pamphlets, and for Regulating of Printing, and Printing-Preſſes*; which plainly ſhews, that the Government was at a Loſs how to puniſh Printing, as ſuch, before; which the Government could not have been at, if the Printer had ſtood chargeable before, for Matters and Things contained in the Books and Pamphlets he printed. Nay, my Lord, the very Statute of 13 *Car.* II. *c.* 1. which made ſeveral Things Treaſon during his Life, did not, as I conceive, extend to the Printer, but to ſuch as ſhould procure to be printed the Treaſons therein contained. I have but one Thing more, my Lord, to urge upon the Matter, and that is the Caſe of *Algernoon Sidney.*

In ſhort, he acquitted himſelf ſo well, that all indifferent Perſons were abundantly ſatisfied, and yet it proved to no more Purpoſe than a *Wall-Lecture.*

In ſumming up the Evidence, two or three old, muſty, impertinent Precedents were brought in, which had not ſeen the Sun for many Ages, the Chief of which was that of Sir *John Oldcaſtle*, Lord *Cobham*, and he might as well have urged the Caſe of the *Man in the Moon:* For what was my Lord *Cobham*'s Caſe to Printing? That famous *Wicklevite* lived in the Reign of *Richard* the Second, ſome Scores of Years before Printing was thought on, which came not into *England* till the Reign of *Henry* the Seventh; and the Priſoner had very well obſerved, That what is not expreſſed in the Statute 25 *Edw.* III. (and it is impoſſible Printing ſhould be expreſſed there,) is barr'd from being any ways adjudged, or interpreted Treaſon, by the Statute, 1 *Mary.* In ſhort, in ſumming up the Evidence to the Jury, every thing was aggravated to the utmoſt, every little Punctilio was made uſe of, which was thought might be any thing ſerviceable to beget in the Jury an hard Opinion of the Priſoner; the Bed with Wheels was not let alone; every little Trifle was fetched in, with all the witty Malice imaginable; nay, the very Soul of the Man was looked into, and the Jury told what was within him; he was an ill-minded Man, a diſaffected Perſon; he was no Lover of the Government; and that *Printing was an Overt-Act:* So the Jury were ſent out to conſider of their Verdict.

After two Hours Debate, the greater Part of the Jury became very well inclined to have found *Not Guilty*; but there was one amongſt them who loved Miſchief, and he was for hanging Men for being *Jacobites*, not for being Guilty: And being ſince told of the Severity of their Verdict, he readily acknowledged, *That the Evidence did not amount to the Proof of the Fact*; *but*, ſaith he, *What of that? I believed he was guilty, and I will hang a hundred of them for half ſo much Evidence.*

When the Jury appeared, the Queſtion was aſked, *Whether they were agreed of their Verdict?* A zealous Man anſwered, *No.* Whereat the Court frowned, and ſhewed themſelves much diſpleaſed, when the *Foreman* of the Jury, (deſirous that all Men may have fair Play for their Lives) put this Queſtion to the Bench, *Whether the having thoſe Things by him, without making any further Uſe of them, did affect the Priſoner as to Life?* Now this Queſtion was very pertinent, though nothing pleaſing; but after ſome frowning and pouting, the Court anſwered, *No.* But that was not their Buſineſs, they were to find it Printing, and that was a ſufficient Overt-Act.

Some of the Jurymen, by way of Complaint, ſaid thus: *My Lord, our Foreman is of Opinion, this Fact is not proved.* Court. *Whether it be proved*

or no, you ought not to determine; the bare finding the Books in his Custody would not be Treason; but the Case is, Gentlemen, here is a Man that has a Printing-Press, to which no Man has Admission but himself; and this Man is found with an Errata, *and* &c. *so that he must needs print the Treason.* To this a Juryman answered, *'Tis a very strong Presumption, my Lord.* And then Baron *Powell* clenched the Nail with this grave Saying, *A violent Presumption is as much as if a Man had been there and done it himself.*

These Answers being returned to the Questions, the Jury were sent back again, where almost three Hours more were spent in debating the Matter, before they could come to a Conclusion, and then complied, and brought in the Prisoner *Guilty.* The Court told them, *That they had done like honest and good Men, and had brought in a Verdict agreeable to their Evidence* *. Sentence according to Course, was put off to the last Day of the Sessions; in the mean Time the Prisoner, that he might either save his Life, or leave those who fought his Blood without Excuse, had a Petition drawn and delivered, which is as followeth:

To the Right Honourable Sir John Fleet, *Lord Mayor of the City of* London, *and the rest of the Commissioners, for the Gaol-Delivery of* Newgate,

The humble Petition of William Anderton, *a convicted Prisoner in* Newgate,

Sheweth,

" THAT whereas your Petitioner has been by the Jury found Guilty " of Printing the Books laid in the Indictment, and thereby is con- " cluded from questioning the legal Evidence they had for it, though " your Petitioner humbly appeals to your Lordships Observations and " Consciences, whether all that was sworn, came up to more than bare " circumstantial Evidence of his bare Printing them; which in Cases " of Treason, as your Petitioner is informed, has never been allowed. " And whereas your Petitioner was advised, That bare Printing these " Books (admitting the same was proved), could not by the Laws be " construed as an Overt-Act of Treason in the bare Printer; and your " Petitioner requested the Court again and again, That this Matter might " be argued by his Counsel, which the Court were pleased not to permit. " Your Petitioner yet, notwithstanding, not doubting of your Lordships " Inclinations, not only to do him all Justice, but to shew him all the " Mercy and Favour you can, that may consist with your Lordships Jus- " tice; and humbly conceiving, That this Court, by further considering " your Petitioner's Case, may, even yet, be capable of relieving your " Petitioner, especially, if, upon hearing what your Petitioner can say, " your Lordships shall be satisfied, That your Petitioner happened to be " Convicted through any Error or Mistake (as no Man was ever exempt " from Error, and the best of Men are always readiest to confess it). " Your Petitioner therefore humbly beseecheth your Lordships Patience, " seriously to read and consider some few (of many) Reasons which your " Petitioner hath heard from others, which he herein has set down as " briefly as he can, as followeth: *First*, They lay down, that the Trea- " son laid in the Indictment, being that of the Intent of the Heart, (ex- " pressed in the Statute, by compassing and imagining the King's Death,) " requires by Law two Proofs, the one of the Fact, the other of the " Inference, and that both these must be plain: That of Fact, (called the " Overt-Act), must be proved by direct and positive Evidence by two " Witnesses at least, and not by Circumstantials only (as this of Print- " ing was against your Petitioner, there being no positive Proof at all, " not so much as by One Witness, given of his Printing either of the " Books laid in the Indictment). And then that of Fact being thus " proved, must by Necessity of Inference as evidently and certainly prove, " That the Party in doing such Overt-Act, could intend, or imagine " thereby nothing less than the King's Death: And if either of these " Proofs fall short of such necessary Certainty, such Indictment must fail, " the Law, for great Reasons, regarding only such plain and direct Proofs " in these great Charges.

" Now, can a Printer, *quatenus*, only the Printer of these Books, be " thereby inferred to assent to, and approve of the Matters and Things " contain'd in these Books, and that necessarily too, *quatenus*, the Prin- " ter? By the same legal Logick, every Printer may be proved to have " in his Heart, and approve of all the Opinions, Notions, and Imagina- " tions contained in all the Books he ever Printed: For a *Quatenus ad* " *omne valet Consequentia.*

" 'Tis true, (say they), Writing and Speaking have, in some Instan- " ces, been accounted as Overt-Acts, and there might be good Reason " for it, as a Man expressing his own Mind by his own Writing, and by " his own Words, which, according to the Manner of his Writing, or " Speaking, may evidently appear to come from his own Heart: And your " Petitioner doth not doubt, but that the Writing a Book, as in Cardi- " nal *Poole*'s Case, and the Signing the Warrant for the Execution of " King *Charles* the First, as in the Case of the Regicides, which Cases " were urged by some of the Court against your Petitioner, were suffi- " cient Overt-Acts, to prove the compassing and imagining the King's " Death. But can these Instances be any thing to the Case of a Printer, " whose Business it is, as a Printer only, to print the Thoughts of others, " being accounted in Law only as a mere Mechanick, and whose End " thereby is to get Money for his Work? And for further Reason in this " Matter, they observe, That as it doth not appear that bare Printing " was ever pretended to be an Overt-Act within *Stat.* 25. *Edw.* III. so " when the Parliament of 13 *Car.* II. carried up Treason to the highest, " for the Preservation of the King's Person during his Life, and (among " other Things) particularly therein took Notice of Printing, yet would " they not thereby lay so great a Penalty upon the Printers, as, no Doubt, " considering the Unreasonableness of comprising such Tools and Me- " chanicks, within an Act intended for Persons of higher Designs: But " this Parliament kept the Printers in their Remembrance, as intending " to consider them by themselves in another Act, as they very soon after " did; for the same Parliament, in 13 and 14 *Car.* II. made an Act, which " they stile, *An Act for preventing Abuses in Printing Seditious, Treason- " able, and Unlicensed Books and Pamphlets, and for regulating Printing and " Presses*; and therein, as they fix them their Rules and Bounds, so they " allot them their Punishment: Which, for the first Offence, is Disabi- " lity for three Years; and for the second, perpetual Disability, Fine, " Imprisonment, or other Corporal Punishment, at Discretion.

" Wherefore, the Premises thoroughly weighed and considered, your " Petitioner humbly implores your Lordships, That, in Favour " of Life, in a new and extraordinary Case, and that too, of High " Treason, your Lordships would be pleased to extend so much " Mercy to your Petitioner, as to suspend your Judgment, and " pronouncing Sentence upon him, until your Lordships shall " have heard what can be further offered by Counsel on his Behalf.

And your Petitioner shall ever pray, &c."

This Petition speaks for itself: When the last Day of the Sessions came, and the Prisoner was asked in Course what he had to say, Why Sentence should not be passed upon him? He desired that his Petition might be read; but the Court not being willing to take Notice of the Knowledge of any such Petition, thereby to elude his Request, he foreseeing it, had provided one ready, and offered it to be read, but no Man daring to take and read it, he took the Freedom to read it himself, and then offered these Things further in Arrest of Judgment.

His Plea in Arrest of Judgment.

My Lord, In Arrest of Judgment, I have these Things humbly to move:

1. Whether if a Jury, not being competent Judges of the Matter of Fact whereof they are to judge, and bring in their Verdict against the Defendant contrary to Law; I say, whether Judgment ought to pass upon the Defendant because of that Verdict?

2. Whether if a Judge (who is Counsel for the Defendant, and therefore indispensibly bound to take particular Cognizance of what the Defendant urgeth in his own Behalf, as well as what is alledged against him), in summing up the Evidence, doth omit (out of Forgetfulness, or otherwise) the only material Point upon which the whole Indictment is founded, and which the Defendant so much urged in his own Behalf; and also which inevitably led the Jury into this Mistake of their Verdict; whether, I say, this be not sufficient to stay Judgment?

3. Whether any Judge, *&c.* can construe *Printing* to be a *sufficient Overt-Act*, till it be so declared by Parliament?

4. Whether the *Stat.* of 13 *Car.* II. does not plainly intimate the contrary? And likewise the 13 and 14 *Car.* II. lately revived?

The Prisoner did make it his humble and last Request, *That these Things being Matter of Law, he might be allowed Counsel to plead them, or any other Matter of Law, in his Case.* And he back'd his Request with this modest Reason, *That being Matter of Law, he thought the Satisfaction of the Judge's Conscience concerned in it, as well as his Life; but if his Counsel could be satisfied, or fairly over-ruled in it, he would acquiesce without more ado.*

The Matter now lay wholly before the City Recorder, Sir *Salathiel Lovell*, who after a Flourish or two of empty Rhetorick, proceeded to pronounce that dreadful Sentence, which the Law allots to Treason; to have the Heart and Bowels torn out, and burnt, and the Body dismembered, and the Quarters set up, or disposed as Authority orders.

Whilst Mr. *Anderton* was preparing for his Death, his Friends were struggling for his Life: He had many Friends upon the Account of his known Ability, Industry, and Integrity; others were taken with his manly Behaviour, and clear pleading upon his Trial; and many more were forward to move in his Case, in Pity, or Indignation, at his Usage.

The Queen (as still upon Occasion it was answered) could do nothing without the Council, nor the Council without the Queen; if the Council was met, the Queen was not there, or if she was there, there wanted such and such of the Council, without whom nothing could be done; and thus Things at every Turn were shuffled off; but where the Danger is imminent, and Time short, Persons are willing to watch hard, and look out sharp. Taking this Course, his disconsolate Wife had at last so fairly set the Council, that it was thought they could not avoid giving her a direct Answer; for though they were resolved he should not live, yet (the Matter being so warmly debated amongst all Sorts of Persons) they were not willing to say peremptorily he should die. To put her by now, this Artifice served effectually; a Number of Waiters attending about the Council-Chamber, fell foul upon the poor Woman in no very courtly Language, reproaching and reviling her, That she did not bring her Husband to Confession: In, short they so teazed and plagued her, that they drove her away.

From the Time of his Commitment, to the very Moment of his Death, he was of a very even and sweet Behaviour, being modestly courageous; chearful without Lightness; and devout without Ostentation. He made it his particular Request, that some Minister, or Ministers,

* " For *Anderton*, who is the last that since the Revolution hath been Executed for High-Treason of this Kind, there needeth no more to shew both the Perjury of the " Witnesses that swore against him, and the Severity and Hastiness of his Conviction and Condemnation, than that a Person arraign'd, and condemned since at the " same Place, hath openly confess'd and avow'd, that he Printed and Published the Book, for which *Poor Anderton* was Cast and Executed. Nor is it for the Credit of those " that sate as Judges, or were upon the Jury, that so infamous a Fellow as *Stephens* was the Principal Witness at the Trial, and the Person upon whose Testimony espe- " cially the arraigned was cast: For, besides his being universally known for a *Rascal*, that will be purchas'd to perpetrate any Villany, provided he may find Impunity in " doing it, his whole Behaviour at that Time, when he gave his Evidence, was so excessive rude and rancorous towards the Prisoner, as might give any indifferent Man a " just Cause to believe, that he was provok'd by Malice, or sway'd by Command, and encourag'd by Reward, to what he did." *See a Letter to the Right Honourable Sir* John Holt, *Knt. Lord-Chief-Justice of the* King's-Bench, *occasioned by the Noise of a Plot. The Second Edition*, 1694. *Page* 8 *and* 9.

would

would be with him every Morning and Evening to read the Prayers of the Church, and perform ſuch other Offices as in ſuch Caſe as his did belong to that Function, which, except one Day in the Week, was duly obſerved, and ſometimes oftner; for when any Clergy came accidentally to viſit him, if they did neglect to offer, he commonly requeſted them to pray with him. He gave little or no Entertainment to any Hopes of Life, as being ſenſible that it was rather Malice, than Matter againſt him; and that a Crime may be pardoned, but Malice is not to be ſatisfied without the Deſtruction of its Enemy, if he once come in its Power. He often expreſſed a great Satisfaction in the Cauſe for which he ſuffered, ſaying, *That it miniſtered to him both Comfort and Courage, and that he doubted not but that God would acquit whom the Court had condemned.* As to the Ordinary (Mr. *Smith*), he indeed, in Point of Conſcience, refuſed to communicate with him, yet mildly and modeſtly telling him, that he was deſirous to give him no Trouble, and requeſted of him, that he would not any ways concern himſelf with him, or about him; at which Mr. *Smith* fell into ſuch an unſeemly intemperate Fit of Rage, that he reviled the Priſoner with bitter Words, and very generouſly damned both him, and all the Miniſters that came at him, to Hell: But he took it patiently, and returned not the leaſt Word that might ſeem to ſound harſhly. As his Wife once laid her Hands on his Fetters, and wept, he intreated her to forbear, ſaying, *He was leſs than a Man that could not bear that; but that her Tears were more grievous to him than his Fetters:* Another Time, as he was hanging a Link on the Chair, thereby to eaſe himſelf ſomewhat from the Weight of his Fetters, and perceiving his Wife to look very heavily at it, he ſaid chearfully to her, *My Dear, theſe are my Arms*, alluding to the Arms of their Family, being *Sable, two ſingle Shack-bolts, and one double, Argent.*

When *Tucker* told him that the *Dead Warrant* was come, and that he was in it, he gave him Thanks for giving him Notice of it, that he might be ſure he had now nothing elſe to do, but to prepare to die; ſaying further, *The Lord's Will be done.* He received the Holy Sacrament twice during his Impriſonment; but whether it be cuſtomary, or that they had particular Order, the Keepers all (except *Walker*, who was all along not only civil, but even compaſſionate towards the Priſoner), the Evening and Morning before he ſuffered, became exceeding rugged and harſh, not only to him, but to all that came to him; inſomuch that his Mother and Brother coming that Morning to receive the Communion with him, could neither beg, nor buy Admiſſion; and the poor old Woman was forced to depart, without joining in the laſt Act of Chriſtian Communion with him, or ſo much as taking her intended laſt Farewel of him.

Other very unbecoming Actions towards him I could mention, which I ſhall forbear, being unwilling to ſet forth that Barbarity which ſome delight to act. When he was brought down to go to the Place of Execution, he entered into the Sledge, and rode along in it with that calm Behaviour, and decent Courage, as ſtruck the Beholders with Remorſe and Amazement, and made his Enemies gnaſh their Teeth with Indignation, to ſee him triumph over their Malice even in his Death. In his Paſſage all the Way, the People rather ſeemed ſorrowful, than inclinable to offer any Abuſe, except near St. *Giles*'s Church, where a rude Fellow treated him with very ſpiteful Language, to which he made no Return, but lifting up his Eyes to Heaven, ſaid, *O ſweet Jeſus! How much more haſt thou ſuffered for me, and for Mankind? And ſhall not I learn of thee patiently to bear the undeſerved Reproaches of this inconſiderate Man?*

As he was coming up to the Place of Execution, a Clergyman got up into the Cart to be ready to receive him; at which the Ordinary ſeemed to be much incenſed; for he gave him very ill Words, bidding him get down, and ſaying, He ought not to be there, nor ſhould he be ſuffered; the Miniſter replied little, but ſtay'd ſtill; till (ſee how one ill Nature helps another) Major *Richardſon* came up, and with Threatnings, and his Cane lifted up, forced him to come down, who immediately thereupon applied himſelf to the Sheriffs, (for by this Time they were come up) when ſome ill Perſon ſuggeſted that he was a *Papiſt*, to which the Priſoner preſently anſwered, *Mr. Sheriff, upon the Words of a dying Man he is not, but a Miniſter of the Church of* England.

The Ordinary made all the Oppoſition he could; but the Sheriff granted the Priſoner's Requeſt, bidding the Ordinary hold his Peace, and ſaying it was a Thing never denied to a dying Man. Being in the Cart, and alſo the Priſoner's Brother, he uſed an Office which ſeemed to be collected out of ſeveral Offices in the Common-Prayer Book, with ſuch ſmall Alterations as might ſerve to adapt them to the preſent Occaſion; being ſince aſked the Reaſon, he ſaid that he did it both for the Authority of the Thing, and alſo to avoid any Cavils that might be made at, or any Snares that might be laid for, any of his own Conceptions. But when he came to mention the Creed, he put theſe particular Queſtions to the Priſoner: *Do you believe theſe Articles which you are now about to rehearſe with me, to contain that Faith which hath all along been received by the Church of* Chriſt, *and particularly by the Church of* England? *And is this the Faith wherein you die, and wherein you hope for Salvation?* The Priſoner making Anſwer, *I do ſo believe, and am now ready to die in that Faith, and in that Faith hope for Salvation.* Then ſaid the Miniſter, *If ſo, ſay after me:* Then they repeated the Creed, raiſing their Voices ſomewhat higher than ordinary; after that, the Miniſter aſked him ſeveral Queſtions concerning his Repentance, his Charity, his Endeavours of Reſtitution for any Wrongs by him done, his forgiving of others any Wrongs done to him, and the like. And then, at the earneſt Requeſt of the dying Man, he denounced the Abſolution, then proceeding to divers other Prayers, they concluded with that Sentence in the Office for the Burial of the Dead: *O holy and merciful Saviour, thou moſt worthy Judge eternal, ſuffer me not at my laſt Hour for any Pains of Death to fall from thee.* This being over, the Miniſter (whether that he could not endure to ſee the Man die, or that he would not communicate with the Ordinary, or for ſome other Reaſon beſt known to himſelf), after he had particularly embraced Mr. *Anderton*, fervently recommended his Soul to God, and taking his laſt Farewel of him, went down out of the Cart. The Sheriffs civilly commanded a Way to be made, and were readily obeyed, he paſſing thro' the Crowd, not only with Eaſe, but Reſpect. During the Time the Priſoner was at his private Devotions, an Order came to remit the Quartering of his Body, which being by ſome thought a Reprieve, it was handed to him, and having read it, and finding it no more, he returned it, ſaying, *I thank you, Mr. Sheriff, the Will of the Lord be done.* Having Leave from the Sheriffs to ſpeak his Mind, if he had any Thing to ſay to the People; he began to ſpeak; but being troubleſomely interrupted by the Ordinary, and alſo finding he could not be heard, he deſired a Speech he had prepared might be taken out of his Pocket, and given to the Sheriffs, to be by them printed, which is as followeth:

To my Countrymen,

" LIberty and Property hath for ſome Years made an hideous Cry in
" theſe Kingdoms, and nothing more than the Rights and Privileges
" of the Subject is the Pretence of our preſent Deliverers; and doubtleſs
" it was for the Sake of theſe that ſo many of my infatuated and blind
" Countrymen rebelled againſt their lawful and injured Monarch, whilſt
" Religion (Rebellion's Umbrage) was made the Covert of the hidden
" Deſigns of thoſe who have now demonſtratively ſhewn, that they fought
" nothing leſs than our Ruin: And that theſe were only Pretences to gain
" their Ends, the very blind, although they cannot ſee, yet muſt certainly
" feel it. Under the like Pretences do our Deliverers ſtill continue to deli-
" ver us even from what they pleaſe, that they think will but in the leaſt
" help to effect what they came for: Under the Notion of the Neceſſity
" of a War, they deliver us from our Money, and from our Traffick and
" Commerce, by which ſo great a Part of the Kingdom is ſuſtained:
" Under the Notion of carrying it on, they kidnap our young Men, the
" Flower of our Kingdom, and, directly contrary to Law, tranſport them;
" and to ſave their own Foreigners, put them in the firſt Onſets of their
" Battles, as the Heathens did the Chriſtians of old, that their Enemies
" Swords might be blunted with killing them, before they came to en-
" counter them: They exhauſt all our Stores both for Sea and Land, and
" carry away all our Artillery; and if any Man ſeem but to diſapprove of
" theſe their Proceedings, under the Notion of Law they murder him:
" Nay, if they do but ſo much as ſuppoſe him not to be on their Side,
" he muſt be a Traitor, and no Matter what the Law ſays, they ſay he
" ſhall die.

" Can any Thing be more plain to demonſtrate this, than my preſent
" Caſe? My ſuppoſed Crime was Printing, and all the Witneſſes could
" perſonally ſay againſt me, was, That I was a Man againſt the Govern-
" ment, and had called the Prince of *Orange* Hook-noſe, though I pro-
" teſt I never did: not one of them could ſay, nor did they offer to ſay,
" that I ever printed the Books of which they accuſe me, or procured
" them to be printed, or publiſhed any of them, or that the Materials
" were mine, or that I hired the Room where they were found; but I
" was an ill Man, and that was ſufficient: By which 'tis plain, that
" they were reſolved, right or wrong, to have my Life.

" That they deſigned not to try, but to convict me, is as plain; for
" they refuſed poſitively to allow me Counſel to ſuch Matters of Law,
" as was never refuſed to any before; and though I cauſed ſeveral Sta-
" tutes to be read, ſome to prove that there muſt be Two Witneſſes at
" leaſt to the Fact; others, that though there had been two, as there was
" not one, yet poſitively declared that it was not Treaſon: Nay, the very
" laſt Seſſion of Parliament was it enacted, That the Printer of ſeditious
" and treaſonable Books ſhould for the firſt Offence be puniſhed no other-
" wiſe than not to follow his Trade for three Years; and for the ſecond
" Offence, never to follow it more, and ſuch farther Puniſhment as ſeemed
" fit to the Court, not extending to Life or Limb. Now though mine
" (had it been proved) had but been the firſt, yet you ſee, contrary, and
" in direct Oppoſition to the Law, they make it High-Treaſon: And
" when the Jury could not agree to find me guilty, and came down to aſk
" the Court, Whether the finding theſe Things there, and ſuppoſing
" them to be mine, ſince it could not be proved that I printed theſe
" Books, or had made any Uſe of them, could affect my Life? I ſay,
" when the Jury aſked this Queſtion, and the Lord-Chief-Juſtice *Treby*
" told them poſitively, *No, it did not*; yet withal he told them, *That*
" that *was not their Buſineſs, their Buſineſs was to find me guilty of Printing:*
" And while they ſtay'd, the Court frowned upon them to that Degree,
" that the Foreman told them, he was not to be frighted; upon which
" they publickly reviled them, calling them, *ill Men, ill Subjects, and a*
" *Pack of Knaves*; and ſo terrified them into a Compliance. That this is
" true, thoſe who were near know too well, although the partial Writer
" of the Trials hath moſt perfidiouſly publiſhed not only an unfair, im-
" perfect, and lame Account, but hath alſo ſtuffed it with downright Un-
" truths and Falſhoods, and left out whatſoever made for me; not ſo
" much as mentioning the Contradictions of the Witneſſes in what they
" did ſwear, their ſwearing to ſome Things that made for me, and when
" I took hold of them, they denied them; nor hath he, in the leaſt, told
" the World of the Judge's over-ruling whatſoever I offered, without
" giving any other Anſwer than that *it ſhould be ſo, becauſe they would have*
" *it ſo*; with many other ſuch Things, which the conſcientious Audi-
" tors can teſtify †.

" And now I pray conſider where is this Liberty and Property?
" Where the Rights and Privileges of the Subject? Nay, where the
" very Laws themſelves? And conſequently where is the Security of
" any Man? Why, even in the Deliverers Pockets, where your Money
" is, and where alſo, without all Doubt, if you look not well to your-
" ſelves, your Eſtates, ere long, will be likewiſe. What are the Pro-
" ceedings but arbitrary in a ſuperlative Manner, and ſuch as no
" Reign ever produced before? Theſe were they you were heretofore
" only afraid of, being jealous without juſt Cauſe; but now you
" ſee them actually come upon you. I hope you yourſelves will put a
Stop

* This Trial here ſpoken of, is the foregoing one, printed in the Seſſions-Paper of that Time.

" Stop to them, by laying these Proceedings before the Parliament, for " had it been sitting at this present, these Proceedings durst not have " been practised; and I pray God to put so speedy an End to " them, that as I am the first, so I may be the last that may suffer " by them.

" I have hitherto lived a Member of the Orthodox Church of *Eng-* " *land*, as by Law established, and I declare I now die in the Unity of " the same: Therefore, according to its Discipline, I hold myself " obliged to ask Pardon of the whole World, of every particular Per- " son whom I have any ways offended; and I do freely and sincerely " forgive every one that has offended me, particularly my most false " and perjured Witnesses, and among them more particularly *Robin Ste-* " *phens*; my most unjust and unrighteous Judges, and my repenting " Jury: and I pray God may not lay this their Sin of wilful Murther " to their Charge at the General Bar, where they shall appear as Cri- " minals, and not Judges.

" May the Almighty bless, preserve, prosper and restore our Sove- " reign Lord King *James*, to the just Possession of his indubitable law- " ful Crowns; strengthen him that he may vanquish and overcome all " his Enemies here on Earth, and crown him with eternal Glory here- " after: And that he may never want Heirs to inherit his Crown, bless, " I beseech thee, O God, his Royal Highness the Prince of *Wales*, and " give him such a numerable Issue, that there may never want one of " his Loins to sway the Scepters of these Kingdoms so long as Sun or " Moon endure. *Amen. Amen!*

June 15, 1693. WILLIAM ANDERTON.

During the Time that the Ordinary busied himself, he was observed not to mind him, but to employ himself in his private Devotions, and after the Delivery of his Speech to the Sheriffs, his Cap pulled over his Eyes ready for Execution, he prayed thus: " Most great and most mer- " ciful Lord God! Do thou look down upon me thy poor unworthy " Servant in this Hour of my great Extremity, and have Mercy upon " me! Sweet Jesus, receive my Soul into thine everlasting Kingdom, " for into thy Hands do I commend my Spirit, because thou hast re- " deemed it, O Lord God of Truth! Come, Lord Jesus, and receive " my precious Soul; Father of Mercy, have Mercy upon me; O God " the Son, Redeemer of the World, have Mercy upon me! Lord, com- " fort and support my Soul in these my last Minutes! Come, sweet " Jesus, come quickly, and save me sweet Jesus; by thy most precious " Blood, by thy Agony and bloody Sweat, and by the coming of the " Holy Ghost, O Lord, do thou deliver me!" Here the Ordinary put in, saying, you must give a Sign when you are ready; whereupon the Sheriffs charged him not to interrupt him: and as he was proceeding, his Sister desired to speak to him, which was granted; who kissing him, and weeping over him, said, *Be of good Comfort, though there is no Pardon for you here, yet there is above.* So when they had taken a Christian Leave of each other, he returned to his Devotions, when after a short pathetical Prayer, constantly calling upon his Saviour, the Cart drove away.

XLVIII. *Proceedings before the Lords of the Council, and the Admiralty; in relation to the Trials of* John Golding, Thomas Jones, John Ryan, Darby Collins, Rich. Shivers, Patrick Quidley, John Slaughter, *and* Constantine De Hartley, *as Pirates, though acting under King* James *the Second's Commission.* September, 1693. 5 Will. & Mariæ.

SINCE the Commencement of King *William*'s War, several Privateers having been taken and detained in Prison, acting by King *James*'s Commission, it was resolved, about *July*, 1692, by the Lords of the Privy Council, That they should be try'd as Pirates, having no Commissions from Kings or Sovereign Powers whatsoever; and accordingly, about *November*, 1692, the Lords of the Admiralty ordered Dr. *Oldish* to proceed against them as Pirates; but he declined the doing thereof, and gave his Opinion in Writing under his Hand, That they were no Pirates, nor ought to be prosecuted as such: Upon which, *September*, 1693, Dr. *Oldish* was summon'd before the Cabinet Council, with Sir *Thomas Pinfold*, Dr. *Newton*, Dr. *Walker*, Dr. *Littleton*, and Dr. *Tindall*.

The Lords of the Council present, with the Secretaries, the Earl of *Nottingham* and Sir *John Trenchard*, were the Earls of *Devonshire* and *Pembroke*, and the Lords of the Admiralty.

Mr. Secretary *Trenchard* demanded the Reason of his Opinion.

Dr. *Oldish*. Pirates are common Enemies to all Mankind, having no legal Authority for what they do; but they shew a Commission sign'd *J. R.* dated at the Court of St. *Germaine*'s, together with Articles and Instructions annexed, in the same Form as Privateers have, giving Caution and Security to bring Prizes, and Judgment into the Court of Admiralty, before *Thomas Shadford*, at *Brest*, or elsewhere: This does no way agree with Piracy, or the Character of a Pirate, who is a Robber, and has thereby lost his Right in the Law of Nations.

Sec. *Trenchard*. But King *James* has lost his Sovereignty, in that he has parted with his Crown, and consequently with the Power of granting such Commissions.

Dr. *Oldish*. A King may be deposed of his Crown, but cannot lose his Right. So says *Grotius*, *Jus Regis penes ipsius manet, utcunque Possessionem amiserit*. A King, therefore, in case he be deposed of his Kingdom by the Law, he has a Right to War, and if so, he has all the Ways and Consequences of War, amongst the rest, Pignorations and Reprisals, which is a Power of granting Letters of Mart and Reprisal.

Sec. *Trenchard*. This may be Law, in case where the King is deposed; but what if the King abdicates?

Dr. *Oldish*. If he did really abdicate, as did the Emperor *Charles* the Fifth, or the Queen of *Sweden*, then he is no other than a private Person, and cannot legally grant any Commission. But whether a Privateer, acting by Commission granted him *de facto* by King *James*, not knowing that he had abdicated, whether such an Error will excuse *à Pœna delicti?* For that a reputable Power is equivalent to a real one in such a Case.

Sec. *Trenchard*. To clear this, Doctor, we must examine the Circumstances of the Case, and see if they be such as may occasion and induce a common Error, whereby many may be deceived, as well as Privateers.

Dr. *Oldish*. 'Tis notorious to us, and all the World, that King *James* was once a lawful King, and acknowledged by us, and all the World, to b so; that when his Army deserted him, he fled to his Ally in *France* for Aid; then he went into *Ireland* to recover his Kingdoms, as his Declaration sets forth; there he grants Commissions: those who fought under those Commissions, and were taken, were not used as Thieves and Robbers, but as Prisoners of War; whereby his Claim seem'd to be allow'd by his very Enemies; and those Persons who acted under him in *Ireland* were treated as Enemies, not Rogues, tho' they acted under no King but King *James*, and by his Command; that upon their Return to *France*, they repair'd to King *James*, their King, and thought him as well impowered to grant Commissions by Sea as Land, and upon Receipt of Commissions from him, came out *animo hostili*, as Privateers, *non animo furandi*, as Pirates: That a colourable Authority remaining in King *James*, will excuse those who acted under him from being Pirates, since the Abdication was never published, nor so much as heard of in *France*; and since in Piracy, which deserves *ultimum supplicium*, if proved, all favourable Allowance ought to be made, and a general Acknowledgment of a false Authority in another Country (where the Commissions were taken) will free them from a felonious Intent in taking them, and consequently from Piracy; for so it is, that King *James* is owned and reputed a King in *France*; and therefore in this Case 'tis undoubted Law, *Communis Error facit jus*.

Lord *Devon*. What if *Tourville* should grant such Commissions to any *Englishman*, were they not Pirates who acted under him?

Dr. *Oldish*. No, even the Power of granting such Commissions being excepted in his Patent, yet by common Intendment, as Admiral, he can grant such Commissions; and as it is not to be presumed, that private Men should look into his Patent, so neither ought they to suffer for not having seen it; 'tis sufficient for them, that he is reputed to have such Power.

Lord *Devon*. What if Monsieur *Pompone*, or any other Minister of State, should grant such Commissions?

Dr. *Oldish*. Why then it would not be good; for by common Presumption, a Secretary of State would not grant such Commissions, that Power being proper only to the Admiral.

Sec. *Trenchard* and Lord *Faulkland*, in great Heat. I —— Pray, Doctor, let us deal more closely with you, for your Reasons are such as mount to High-Treason. Pray, what do you think of the Abdication?

Dr. *Oldish*. That is an odious, ensnaring Question; however it may be, I think of the Abdication as you do; for since 'tis voted, it binds at least in *England*: But those Gentlemen were in a Foreign Country, and knew nothing of it; and tho' King *James* be not King here, yet the Colour of Authority remaining, and common Reputation of him as King there, excuses them, as I said before.

Sec. *Trenchard*. What say you of the Pirates under *Anthony*, King of *Portugal?*

Dr. *Oldish*. As to the Case of the *Frenchmen*, under *Anthony*, King of *Portugal*, the Book says, *Tractati sunt non quasi justi hostes, sed quasi Pirati qui sub Antonio militant*; and the Difference of this Case appears in the Reason of it: For there the *Spaniards* never owned *Anthony* as King; here it is quite otherwise, for King *James* was really and truly a King, owned by us, and all the World *.

Sir

* Dr. *Tindall*, in his *Essay concerning the Law of Nations*, Page 25, 26, 27, 28, 29, and 30, says, The Occasion of sending for the Civilians, after some of them that were consulted had given their Opinions in Writing, was, as the Lords told Sir *Thomas Pinfold*, and Dr. *Oldish*, (who had declared that they were not Pirates, without offering to shew the least Reason why they were of that Mind) to hear what Reason they had to offer for their Opinion.

Then Sir *Thomas Pinfold* said, It was impossible they should be Pirates, for a Pirate was *hostis humani generis*, but they were not Enemies to all Mankind, therefore they could not be Pirates. Upon which all smiled, and one of the Lords asked him, Whether there ever was any such Thing as a Pirate, if none could be Pirate but he that was actually in War with all Mankind? To which he did not reply, but only repeated what he had said before. *Hostis humani generis* is neither a Definition, or as much as a Description of a Pirate, but a Rhetorical Invective to shew the Odiousness of that Crime. As a Man, who, though he receives Protection from a Government, and has sworn to be true to it, yet acts against it as much as he dares, may be said to be an Enemy to all Governments, because he destroyeth, as far as in him lieth, all Government, and all Order, by breaking all those Ties and Bonds that unite People in a Civil Society under any Government: So a Man that breaks the common Rules of Honesty and Justice, which are essential to the Well-being of Mankind, by robbing but one Nation, may justly be termed *hostis humani generis*; and that Nation has the same Right to punish him, as if he had actually robbed all Nations.

Doctor *Oldish* said, That the late King, being once a King, had, by the Laws of Nations, a Right to grant Commissions; and that though he had lost his Kingdoms, he still retained a Right to the Privileges that belong to Sovereign Princes. It was asked him by one of the Lords, Whether he could produce an Author of any Credit, that did affirm, that he that had no Kingdom, or Right to any, could grant Commissions, or had a Right to any of those Privileges, that belong to Sovereign Princes? And

Sir *Thomas Pinfold* being aſked what he had to ſay, declared himſelf of the ſame Opinion.

Dr. *Newton*, and Dr. *Walker*, did not declare their Opinions, but deſired Time to conſider of it. Dr. *Newton* ſaid, It was againſt his Conſcience to have a Hand in Blood.

Dr. *Littleton* ſaid, That King *James* now was as a private Perſon; we had no War with him, nor he with us; or if he deſigned to have any, *Ærarium non habet*, he is not in a Capacity of making War, he can neither ſend nor receive Ambaſſadors; and thoſe who adhere to him, are not Enemies, but Rogues, and conſequently thoſe Perſons are not privateers, but Pirates.

Dr. *Tindall* was of the ſame Opinion with Dr. *Littleton*.

Dr. *Oldiſh* hereupon was removed from his Place of King's Advocate, and Dr. *Littleton* ſucceeded him, who tried the Perſons, and condemned them. After their Condemnation, they preſented the following Petition to the Houſe of Peers, *viz.*

To the Right Honourable the Lords Spiritual and Temporal in Parliament aſſembled, The Humble Petition of John Golding, Thomas Jones, John Ryan, Darby Collins, Richard Shivers, Patrick Quidley, John Slaughter, *and* Conſtantine De Hartley, *now Priſoners in the* Marſhalſea, *lately tried and condemned as Pirates and Traitors,*

Sheweth,

THAT whereas your Petitioners have been lately tried and condemned as for Piracy and Treaſon, for acting under Commiſſions from King *James*, and the King of *France:* Whereas, as your Petitioners humbly conceive, and are adviſed, they ought not, by the Laws of Nations, or the Laws of this Land, to have been condemned as for either; but to have been uſed as Enemies and Priſoners of War.

And whereas there is a Reſerve in the Statute of 25 *Edw.* III. of Treaſon, That where any Caſes, in Times to come, ſhall happen before any Juſtice, which may be ſuppoſed Treaſon, but are not therein ſpecified, that ſuch Juſtice ſhall tarry, without going to Judgment, 'till the Cauſe be ſhewed and declared before the King and his Parliament.

And whereas your Petitioners, at their Trials, did humbly inſiſt, and often requeſt the Judges that tried them, that their Caſes might be ſpecially found by the Juries, and that they might have Counſel aſſigned to argue them; and particularly propoſed the aforeſaid Reſervation in the ſaid Statute for Treaſon, to their ſerious Conſiderations; yet nothing of all this could be obtained from your Petitioners Judges, or prevail with them to ſuſpend the condemning your Petitioners, ſo much as for one Hour: Although no ſuch, or ſuch like Caſes as any of your Petitioners are, (conſidered with all their Circumſtances) or have ever, as your Petitioners are adviſed, been adjudged Treaſon, as will ſufficiently appear to your Lordſhips, (as your Petitioners believe) if your Lordſhips will be pleaſed to take into your ſerious Conſiderations your Petitioners Caſe hereunto annexed, with the Reaſons added thereunto. Your Petitioners therefore humbly appeal to your Lordſhips Juſtice in the Premiſes, beſeeching your Lordſhips ſeriouſly to read and conſider your Petitioners ſaid Caſes, and extend your Juſtice and Goodneſs to your Petitioners, for their Relief, as to your Lordſhips great Wiſdoms ſhall ſeem meet, and to intercede for your Petitioners.

And your Petitioners ſhall ever pray, &c.

Our Caſes, with ſome Reaſons and Conſiderations, humbly offered to your Lordſhips now aſſembled in Parliament, why we *John Golding*, &c. lately condemned as Pirates and Traitors, ought not, according to the Law of Nations, ſo to have been.

Our Caſe is this: We ſay (as was alſo ſaid at our Trial), That we are all Natives of *Ireland*, and were in the actual Service of King *James*, and all along acted under his Commiſſions, from the Time that the Prince of *Orange* invaded *England*, to the Time of the Surrender of *Limerick*; and the Articles made upon that Capitulation, ſigned by Lieutenant-General *Ginkle*, which were ſoon after publiſhed by Authority: That we, with ſeveral Thouſands more, purſuant thereunto, were conveyed as Enemies into *France*, with Arms, Horſes, Braſs Guns, Mortar-pieces, and Ammunition. That being thus conveyed into *France*, we were continued ſtill to act and ſerve under King *James*'s Commiſſions, as our King; and he all along, both whilſt we were in *Ireland*, and after we were thus conveyed into *France*, continued to command or commiſſion us as his Subjects. And we the ſaid *Richard Shivers*, &c. who are condemned as Pirates, ſay, (as we alſo ſaid at our Trial) That the Ship and Goods, for the taking of which we were charged as for piracy, we took as Privateers, by Virtue of a Commiſſion and Inſtructions from King *James*, ſigned and dated from his Court at St. *Germain*'s in *France*; where he exerciſes a regal Authority. And we the ſaid *John Golding* and *Thomas Jones* ſay, That we accepted the King of *France*'s Commiſſion, and acted under it, (for which we were condemned as Traitors) by the Permiſſion and Conſent of King *James*. And we all ſay, (as we likewiſe ſaid at our Trials) That we never owned or ſubmitted to the Authority of this Government in any Reſpect whatſoever, or ever received any Protection from it, or from King *William*, but all along ſerved as Subjects to King *James*, and Enemies to King *William*; and were taken as in actual Hoſtility, acting under the aforeſaid Commiſſion and Inſtruction. We alſo ſay, That there are many Thouſands in *Flanders*, *England*, *Scotland*, and *Ireland*, who have all along, and ſtill do act promiſcuouſly under King *James* and the King of *France*'s Commiſſions; and in either Caſe, as often as any of them have been taken Priſoners, they have been treated as Enemies, and Priſoners of War.

And our Caſe being thus, we humbly conceive, that neither by the Law of Nations, or by the Law of this Land, we ought to be treated otherwiſe than as Enemies and Priſoners of War.

And Firſt, We humbly beg Leave to offer, and ſay, That King *James* was at the Time of the Invaſion of *England*, by the Prince of *Orange*, actually and rightfully King of theſe Realms; and that by the late Invaſion of *England*, King *James* and the Prince of *Orange* became actual Enemies to each other; and that the Soldiers taken in Arms by either Party, ought, and were looked on as Enemies, and Priſoners of War.

That as long as any War continue, the Priſoners taken on either Side, are Priſoners of War.

That King *James*'s withdrawing from *England*, did not put an End to this War between him and the Prince of *Orange*; and that the War in *Ireland* was a Continuation of that War.

That it is lawful for the Subjects of theſe Kingdoms, to ſtand by, and aſſiſt their lawful King, as long at leaſt as they pleaſe, in any War or Deſign raiſed againſt him, or his Government; and are not compellable to quit their Service to ſuch lawful King, ſo long as he will continue to act as King, and command them as Subjects.

That in caſe of any Invaſion, and Diſpoſſeſſion enſuing thereupon, the Subjects of theſe Realms are not bound to abide within theſe Realms, and ſubmit and become Subjects to the Diſpoſſeſſor, at the Peril of Treaſon; but may lawfully ſtill attend their King's Fortune and Service, if they chuſe ſo to do.

That the Poſſeſſion of theſe Kingdoms, obtained through any Invaſion, does not either alter the Poſſeſſion of, or Right to the Subjects Allegiance; for that Allegiance is a natural Relation, and follows the natural Perſon of the King, and is not incident, or appurtenant to a Place, like a *Villein* to a Manour; for this, be pleaſed to ſee the great Caſe of the Union of *Scotland*, in *Moor*'s *Reports*, p. 790, ſolemnly conſidered, and adjudged in Parliament.

That any Diſpoſſeſſor of any lawful King of theſe Realms, cannot legally pretend to the Allegiance of ſuch Subjects of ſuch lawful King, as never were within his Power, or Subjection, or ever recognized, or ſubmitted to him, or had any Protection from him, becauſe ſuch can be no Debtors to him, and Allegiance is a Debt, and therefore ſuch cannot ſtand accountable to any ſuch Diſpoſſeſſor as for Treaſon, till he is ſome way or other poſſeſſed of their Allegiance.

That the Allegiance of any Subjects of this Kingdom, cannot be tranſferred to the Diſpoſſeſſor of a lawful King, by the Act of others, without ſome Conſent, or Act of their own.

that no King would ſuffer thoſe Privileges to be paid to *Chriſtina*, when ſhe ceaſed to be Queen of *Swedeland*; and that it was the Judgment of all the Lawyers that ever mentioned that Point, that ſhe had no Right to them; and he did hope, that thoſe that had ſworn to their preſent Majeſties, did not believe the late King had ſtill a Right: And that *that* Point was already determined, and would not be ſuffered to be debated there. *To which he anſwered*, That King *James* was allowed very lately the Rights of a King, and that thoſe that acted by his Commiſſion in *Ireland* were treated as Enemies; and People that followed his Fortune, might ſtill ſuppoſe he had a Right, which was enough to excuſe them from being guilty of Piracy.

One of the Lords then demanded of him, If any of their Majeſties Subjects, by virtue of a Commiſſion from the late King, ſhould by Force ſeize the Goods of their Fellow-ſubjects by Land, Whether that would excuſe them from being guilty at leaſt of Robbery? If it would not from Robbery, Why ſhould it more excuſe them from Piracy? To which he made no Reply. *Then the Lords aſked Sir* Thomas Pinfold *and him*, Whether it were not Treaſon in their Majeſties Subjects, to accept a Commiſſion from the late King, to act in a hoſtile Manner againſt their own Nation? Which they both owned it was (and Sir *Thomas Pinfold* has ſince, as I am informed, given it under his Hand, that they are Traitors). *The Lords further aſked them*, If the ſeizing the Ships and Goods of their Majeſties Subjects were Treaſon, Why they would not allow it to be Piracy? Becauſe Piracy was nothing elſe but ſeizing the Ships and Goods by no Commiſſion; or what was all one, by a void or null one; *and ſaid*, That there could be no Commiſſion to commit Treaſon, but what muſt be ſo: To which they had nothing to reply. Only Dr. *Oldiſh* pretended to quote a Precedent, which he ſaid came up to the preſent Caſe, about *Antonio*, King of *Portugal*, who (as he ſaid), after he had loſt his Kingdom, gave Commiſſions to Privateers to ſeize upon all *Spaniſh* Veſſels, whom, as the *Spaniards* met with, they hanged as Pirates; (ſo far his Precedent is againſt him:) But an Author, without naming him, was of Opinion, *as he ſaid*, That if *Antonio* had ever been a rightful King, that then the *Spaniards* ought not to have treated thoſe that acted by his Commiſſion as Pirates. This was all that was ſaid by the Doctor in behalf of the late King's Privateers; upon which I muſt beg Leave to make a few Reflections. As to thoſe Privileges which were allowed the late King in *Ireland*, they were not allowed him upon the Account of any Right, nor was it an owning that he had any Right to that Kingdom, but barely as he was in Poſſeſſion; for then he had *Rempublicam*, *Curiam*, &c. and conſequently a Right to be treated as an Enemy; and not only he, but whoever had been in Poſſeſſion, would have had a Right to have been uſed after the ſame Manner, and is no more than what is practiſed in all Civil Wars, where there are juſt Forces on either Side. Theſe Privileges being allowed him when he was a publick Perſon, and in Poſſeſſion of a Kingdom, could be no juſt Reaſon to induce any to imagine that they would be permitted him when he was reduced to a private Condition: much leſs is it ſuch a Preſumption as is ſufficient to excuſe them, who acted by his Commiſſion, from ſuffering as Pirates. The very taking a Commiſſion from him, after he was reduced to a private Condition, to act againſt their own Nation, was a Demonſtration that the Government was no longer in his, but other Hands, who could not reaſonably be preſumed would allow that he had ſtill any Right, or that they that acted by his Commiſſion ſhould be dealt with as if he ſtill had a Right; but that they ſhould be uſed as if they acted by no Commiſſion, or what is all one, a null or invalid one. Their pretending to believe he has ſtill a Right, is no more an Excuſe in the Caſe of Piracy, than of Treaſon, which every Traitor may pretend to.

As to the Story of *Antonio*, the Doctor is (to ſuppoſe no worſe) abominably miſtaken in the very Foundation; for they that ſuffered by the *Spaniards* as Pirates, were *French*, who had not their Commiſſions from *Antonio*, but from their own King, as *Albericus Gentilis*, who mentions this Story, *Lib.* 1. *cap.* 4. ſaith, *At ipſa Hiſtoria vincat eas non fuiſſe Piratas, per literas quas Regis ſui oſtendebant, cui Regi ſerviebant, non Antonio, et ſi maxime pro Antonio, quod illos non tangebat.* And *Coneſtaggius*, who is the Hiſtorian he refers to, and who has given an excellent Account of that War, ſaith, It was the Royal Navy of *France* (which is very improbable did act by any Authority but that of the *French* King's) ſet out, as he words it, *Regis ſub Auſpiciis*, with which the *Spaniſh* Fleet engaged, and had the good Fortune, after a long and bloody Fight, to rout it, and took above five hundred Priſoners, of which almoſt the fifth Part were Perſons of Quality, whom the *Spaniſh* Admiral was reſolved to ſacrifice as Pirates, becauſe the *French* King, without declaring War, had ſent them to the Aſſiſtance of *Antonio*: Againſt which Proceedings the Officers of the *Spaniſh* Fleet murmured, and repreſented to their Admiral, that they were not Pirates, becauſe they had the *French* King's Commiſſion; but That they chiefly inſiſted on, was the ill Conſequence it would be to themſelves, who, if they fell into the Hands of the *French*, muſt expect the ſame Uſage. As to the *French* King's aſſiſting *Antonio* without declaring War, they ſuppoſed, that before the Sea Fight, the two Crowns might be ſaid to be in a State of War, by Reaſon of frequent Engagements they had in the Low Countries. This is the Account *Coneſtaggius* gives of it, which, how little it is to the Purpoſe the Doctor quoted it for, is ſo viſible, that there is no Need of any Words to ſhew it. But granting (as the Doctor ſuppoſeth) that *Antonio* never had any Right, or at leaſt the *Spaniards* would never allow he had any; yet it is evident from the Hiſtorian, that they allowed him, during Poſſeſſion, the ſame Privileges as the late King had during the War in *Ireland*: And if the *Spaniards*, by the Law of Nations, after *Antonio* was driven from his Kingdom, might treat thoſe that acted by his Commiſſion as Pirates, why may not the *Engliſh* deal after the ſame Manner with thoſe that act by the late King's Commiſſion, ſince they look on him to be in the ſame Condition as the *Spaniards* did on *Antonio*, without a Kingdom, or Right to one? What Difference can that make, that one had never a Right, and the other, though he had once a Right, has loſt it?

Theſe two Civilians, I believe, are the only Perſons pretending to be Lawyers, that are of Opinion, That a King without a Kingdom, or Right to one, has, by the Law of Nations, a Right to grant Commiſſions to Privateers, eſpecially if they are Subjects (as they have acknowledged it) to that King, againſt whom they, by their Commiſſions, are to act. Upon what Account can ſuch a Perſon claim theſe Privileges? Or for what reaſon ſhould Mankind pay them to him, more than to other private Perſons? Are theſe Privileges like the Charms, or indelible Characters, the *Papiſts* ſay, are inſeparable from the Perſons of their Prieſts? Which, whatever it be in Eccleſiaſticals, is no ſmall Bigotry and Phanaticiſm in Civil Affairs. And it is the Height of Folly, Madneſs, and Superſtition, to believe that the People, who have entruſted ſome one amongſt them with Power for no other End but for protecting them, can, upon no Account whatever, reſume it.

That a King may continue to wage War after he is diſpoſſeſſed of his Kingdom, and be reputed ſtill an Enemy by the Law of Nations, and conſequently all thoſe of his Subjects that continue ſtill with him, without transferring their Allegiance to the Poſſeſſor, be reputed and treated as Enemies; for it would be abſurd to ſay, That the King may continue in War, where the Subjects cannot.

That King *James* having no *Ærarium*, or Treaſury, (in caſe it be ſo) as has been alledged againſt the Validity of his Commiſſion, is no more Senſe, than it would be to ſay, That no Prince by the Law of Nations can continue War, but at his own Charge.

That the War between King *William* and King *James* continued on, after King *James* and his Forces left *Ireland*, and that the Articles upon the Surrender of *Limerick*, admit it ſo to do, if the permitting ſo many Thouſand Men with Arms, Horſes, Guns, and Ammunition to go into *France* to King *James*, to ſerve as Soldiers, commiſſioned by him, may be any Proof of ſuch Admiſſion.

That the ſaid Article being ſigned by Lieutenant-General *Ginkle*, *Limerick* and other Places having been ſurrendered upon the Faith of thoſe Articles, all concerned in them, ought by the Law of Nations to have the full Benefit of them; and that, although they had never afterwards been confirmed.

That King *James* is ſtill actually in War, and in Confederacy with the King of *France*; that many Thouſand *Engliſh*, *Scotch* and *Iriſh* ſtill act under Commiſſion from King *James*, in conjunction with the *French* Forces: That they have hitherto been diſcharged and exchanged by the Confederates, (as Priſoners of War) though taken fighting againſt the *Engliſh* that act under King *William*'s Commiſſion; and if ſo, Why are King *James*'s Commiſſions annull, and nothing at Sea?

That King *James* and the King of *France* being confederated together in War againſt *England*, it matters not in the Judgment of the Law of Nations, under which of the Confederates Commiſſion the Subjects of either act; whether under King *James* or the King of *France*'s; but the Enemy without Diſtinction, if either Subject act under either Commiſſion, ought by the Law of Nations to treat them as Enemies and Priſoners of War.

That where two Kings join in War againſt one another, after one of them has loſt Part of his Dominions, (as King *James* had, when the King of *France* ſent him Forces into *Ireland*) and ſoon after he became wholly diſpoſſeſſed, would it not be abſurd, for any one to ſay upon this Caſe, That it was abſurd by the Law of Nations for the one King to aſſiſt or join with the other, after that he had loſt Part of his Dominions? or if he does, that yet notwithſtanding the War is wholly at an End as to the Loſer, and he becomes a private Perſon, though never ſo many of his Subjects follow him in Warlike Manner by Capitulation from the Enemy, or that theſe Subjects are diſabled by the Law of Nations, to accept any Commiſſion from him, (or his Confederate King by his Conſent) or ſerve him any more as their King: Or, if they do, that this will not excuſe them from being Pirates and Traitors to the Diſpoſſeſſor.

That the Law of Nations, to the Judgment of which our Caſe only belongs, is the Great and Imperial Law of Right and Equity, that judges of the Rights of Kings and Nations, with reſpect to each other, and of the Rights of War, and of the Rights of Peace; and all Nations with reſpect to this Law are conſidered as one great Corporation, and each Kingdom or Nation but as a ſingle Member or Part of this Corporation. And therefore this Law, or any Rule of Right, or Notion of it, cannot be altered, concluded or eſtopped by any Votes, Ordinances or Statutes of any particular Nation or Kingdom.

That every Lawful Eſtabliſhed King, in the Notion of this Law, has a Right to hold his Kingdom, during his Life; and that in caſe it be any ſuch King's Misfortune to be diſpoſſeſſed through any War or Invaſion, That he has *Jus Belli pro Regni Recuperatione*, and a Right to the Aſſiſtance of any other Prince, who ſhall think fit to join with him for the Recovery of his Kingdom, as being as much his Legal Remedy, as for any private Perſon for the diſſeizing his Freehold by the particular Laws of any particular Kingdom.

That 'tis alſo a Notion and Rule of this Law, That no Lawful King can loſe the Name and Title of King, unleſs he reſign or abdicate his Kingdom; and that every Abdication or Reſignation ought to be the Voluntary and Intentional Act of ſuch King ſo to do, or elſe that it is no Abdication or Reſignation. That every ſuch Abdication or Reſignation by this Law muſt appear otherwiſe to the Judges of this Law, than only by a Vote or Statute, made only by the Prince and Perſons in Poſſeſſion of the Kingdom of ſuch ſuppoſed Abdicated King; or otherwiſe theſe Judges cannot, by the Law of Nations, admit it to be in any Caſe, wherein the Writ or Iſſues of the ſame Caſe turns upon ſuch Abdication: Eſpecially, if ſuch King continued to act as a King, and to grant Commiſſions as ſuch, *&c.* For if once ſuch a Vote or Statute ſhould be admitted as Evidence in our Law, (would theſe Judges ſay) no Prince once out of Poſſeſſion, however he came ſo to be, could retain any Right to his Kingdom: or the very Name of a Prince, unleſs his Enemy would pleaſe to let him? For it would be no more than for the Enemy to vote that the Prince has Reſigned or Abdicated, and there would be an End of the Prince and his Right; as to be ſure no prevailing Enemy would omit to do, if ſuch, or any ſuch Vote, or Law made among themſelves, would by the Law of Nations utterly conclude, and unking the diſpoſſeſſed Prince, and diſſolve all Relation between him and his Subjects, as conſequently it muſt do; and that therefore, however the Party making ſuch Vote, and receiving Protection from the Prince in Poſſeſſion, may be eſtopped and bound by it by their own Acts and Conſents, yet in the Eye of the Law of Nations, (which alters not) he continues in all the Circumſtances and Rights of a diſpoſſeſſed Prince, until he ſhall appear to have Reſigned or Abdicated, according to the Law of Nations.

Laſtly, We moſt humbly propoſe, and appeal to your Lordſhips Conſiderations, whether the Articles of *Limerick*, which were produced at our Trial, and are ready to produce to your Lordſhips, and the very reputed Power (in caſe he had no other) King *James* has hitherto had, and uſed, of granting Commiſſions, and all that have hitherto acted under his Commiſſion having been uſed and treated as Soldiers and Seamen acting under real and valid Commiſſions, be not ſufficient to excuſe us (who have never been within this Kingdom ſince the Beginning of the War, 'till we were brought Priſoners from the Condemnation of Pirates): And whether acting under the King of *France*'s Commiſſion, being in Amity and League with King *James*, and by his Conſent, can be in us Treaſon againſt King *William*, who never, in any Reſpect, received his Protection, but adhered all along to King *James*, as to our King, and fought againſt King *William*, as King *James*'s Enemy.

Theſe Conſiderations are humbly ſubmitted to your Lordſhips, being, as we conceive, of the greateſt Conſequence to all the Subjects of *England*, as the Caſe may ſometimes happen.

However, ſome of them, if not all, were executed.

XLIX. *RESOLUTIONS of the* Houſe of Lords *on ſeveral Books*, &c. 1701 and 1702. 13 W. & 1 A.

The Vote or Reſolution and Orders made by the Lords Spiritual and Temporal in Parliament Aſſembled, relating to William Fuller, *and the Books publiſhed by him (a).*

Die Lunæ 19 *Januarii*, 1701.

WHEREAS by Order of the Houſe of Peers, of the Twelfth Inſtant, *William Fuller* was Ordered peremptorily to produce before their Lordſhips this Day Mr. *Thomas Jones*; and Mr. *Fuller* attending at the Door, was called in, and aſked ſeveral Queſtions relating thereunto; but the ſaid *Fuller* not producing the ſaid *Thomas Jones*, nor making any ſatisfactory Excuſe to the Houſe for his not producing of him: The Houſe came to the following Reſolution, *viz.*

It is Reſolved by the Lords Spiritual and Temporal in Parliament Aſſembled, That in the Books publiſhed by *William Fuller*, one intitled, *Original Letters of the late King's, and others, to his greateſt Friends in* England; the other intitled, *Twenty-ſix Depoſitions of Perſons of Quality and Worth*, are contained divers Falſe, Malicious, and Scandalous Matters, reflecting upon ſeveral Members of both Houſes of Parliament; which are of dangerous Conſequence to the Government.

And thereupon the following Orders were made:

It is ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Directions of this Houſe given to the Warden of the *Fleet*, the Eighth Inſtant, that he ſhould not confine *William Fuller* further than he uſed to be, be ſet aſide and vacated; and that *William Fuller* ſhall be, and he is hereby, committed Priſoner to the Priſon of the *Fleet*.

It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That His Majeſty's Attorney-General do forthwith proſecute *William Fuller*, according to Law, for writing and publiſhing the ſaid Falſe, Malicious and Scandalous Matters; and that his Majeſty's ſaid Attorney-General do alſo forthwith proſecute Mr. *Peter Buck* and Mrs. —— *Baldwin*, who Printed and Publiſhed *William Fuller*'s ſaid Books *(b)*.

Matth. Johnſon, Cler' Parliamentor.'

The Proceedings and Reſolution of the Right Honourable the Lords Spiritual and Temporal in Parliament Aſſembled, on Saturday *the Ninth of* May, 1702, *upon Part of the Preface to the Book, intitled*, The Hiſtory of the laſt Parliament, began at *Weſtminſter* the Tenth Day of *February*, in the Twelfth Year of the Reign of King *William*, *Anno Domini* 1700 *(c)*.

Die Lunæ 4 *Maii*, 1702.

COmplaint being made to the Houſe, of a Paſſage in the Preface of a Printed Book, intitled, *The Hiſtory of the laſt Parliament, began at* Weſtminſter *the Tenth Day of* February, *in the Twelfth Year of the Reign of King* William, Anno Domini 1700.

The Paſſage was read to the Houſe, and is as follows, *viz.*

Matth. Johnſon, Cler' Parliamentor.'

(a) Die Lunæ 19 *Januarii*, 1701. It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Vote or Reſolution and Orders made this Day relating to *William Fuller*, and the Books Publiſhed by him, ſhall be forthwith Printed and Publiſhed. *Matth. Johnſon*, Cler' Parliamentor.'

(b) June 23. *William Fuller*, that branded and infamous Impoſtor, being by an Order of the Houſe of Lords, of the 19th of *January*, proſecuted for Publiſhing two falſe and ſcandalous Libels, the one entitled *Original Letters of the late King* James, *and others, to his greateſt Friends in* England; the other called, *Twenty-ſix Depoſitions of Perſons of Quality and Worth*, reflecting upon ſeveral Members of both Houſes of Parliament (particularly the Earl of *Nottingham*), and being fully convicted thereof, was brought to the *Queen's Bench* Bar, where Sentence was pronounced upon him, That he ſhould appear in all the Courts of *Weſtminſter*, with a Paper, denoting his Offence; That he ſhould ſtand Three Times in the Pillory, and afterwards be ſent to the Houſe of Correction in *London*, there to be whipped and continued to hard Labour, 'till the 24th of *October* next, and that he ſhould remain in Cuſtody, 'till he paid a Fine of 1000 Marks. Purſuant to this Sentence, *Fuller* ſtood Three Times in the Pillory, and was moſt unmercifully handled by the Mob at *Charing-Croſs* and *Temple-Bar*, but was more favourably uſed before the *Royal Exchange*. *Annals of Queen* Anne, Vol. 1. Pag. 53.

(c) Die Sabbati 9 *Maii*, 1702. It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Proceedings of this Houſe, in Relation to this Matter, be Printed and Publiſhed. *Matth. Johnſon*, Cler' Parliamentor'.

And.

'And perhaps there was a third Thing in Prospect of deeper Reach 'than all these; which was, That should it have pleased God, for our Sins, 'to have snatch'd from us the King on the sudden, by Chance of War, 'or other fatal Accident, during the Tumult of Arms Abroad, and the 'Civil Disorders they had rais'd among us at Home, and a numerous, 'corrupt, licentious Party throughout the Nation, from which the *House* 'of *Commons* was sometimes not free, they might entertain Hopes from 'the Advantage of being at the Helm, and the Assistance of their Rabble, 'to have put in Practice their own Schemes, and have given us a new 'Model of Government of their own Projection, and so to have procured to 'themselves a lasting Impunity, and to have mounted their own Beast, the 'Rabble, and driven the sober Part of the Nation like Cattle before 'em.

'That this is no groundless Conjecture, will readily appear to any con-'sidering Persons, from the Treatment Her Royal Highness the Princess 'of *Denmark*, the Heiress Apparent to the Crown, met with all along 'from them and all their Party. They were not contented to shew her a 'constant Neglect and Slight themselves, but their whole Party were in-'structed to treat her not only with Disrespect, but Spight; they were 'busy to traduce her with false and scandalous Aspersions; and so far 'they carried the Affront, as to make Her at one Time almost the com-'mon Subject of the Tittle-Tattle of almost every Coffee-House and 'Drawing-Room, which they promoted with as much Zeal, Applica-'tion, and Venom, as if a Bill of Exclusion had then been on the Anvil, 'and these were the Introductory Ceremonies.'

It was thereupon Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That *Francis Coggan*, *Robert Gibson*, and *Thomas Hodgson*, for whom the said Book is mention'd to be printed, shall, and they are hereby required to attend this House, on *Saturday* next at Eleven of the Clock.

Die Mercurii, 6 *Maii*, 1702.

The House being inform'd, That Doctor *Drake* own'd himself to be the Author of a Book, intitled, *The History of the last Parliament*, for printing whereof some Booksellers are Ordered to attend on *Saturday* next; and that he desired he might be appointed to attend at the same Time: Thereupon it is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That Doctor *Drake* do attend this House, on *Saturday* next at Eleven of the Clock.

Die Sabbati, 9 *Maii*, 1702.

After reading the Order made the Sixth Instant, at the Desire of Doctor *Drake* for his Attendance this Day, the House took into their Consideration the above-mentioned Paragraph. After the Reading whereof, Doctor *Drake* was called in, and the Order of the Sixth Instant read to him.

The Lord Keeper ask'd him what he had to say concerning the said Book? And the Book and the said Paragraph being shew'd him, he owned he writ the Book, and that Paragraph in particular; and he thought he had just Reason to write it, he having heard her Highness talk'd of dis-respectfully in almost every Coffee-House.

Then he withdrew.

And, after some Debate, was call'd in again; and the Lord Keeper told him, The House was not satisfied with what he had said, but thought he trifled, and required him to acquaint the House with the Grounds of his writing that Paragraph.

He answer'd, He found it mentioned in divers anonymous Pamphlets publish'd at that Time, and hoped it was no Hurt to answer those Pamphlets, and desired Time to recollect what those Pamphlets were; and then withdrew.

After some Time he was call'd in again, and asked the following Questions, *viz.*

If he could charge any Person or Persons in the Kingdom, with the Matters asserted by him in that Paragraph?

To which he Answer'd, That he did not know any such Person.

Then he was ask'd, Whether he had heard any other Persons say, That they could charge any Person whatsoever with the Matters contain'd in that Paragraph?

He said, He did not know of any such Person.

Being farther ask'd, If he had any other Grounds besides the Pamphlets, and what those Pamphlets were?

He said, He had no other Grounds besides the Pamphlets; and named the several Pamphlets following, as the Ground of writing that Paragraph, *viz.*

The Two Legion Letters; The Black List; The *Jura Populi Anglicani*; and *Toland*'s Reasons for inviting over the Princess of *Hanover*.

And being ask'd, If in any one of these Pamphlets there was any thing said about setting aside the present Queen?

He answer'd, He did not remember there was.

Then, he being withdrawn, the said Paragraph was taken into Consideration, and it was proposed to pass a Censure thereupon.

And after Debate,

This Question was put, That a Censure shall be now put upon the said Paragraph.

It was Resolved in the Affirmative.

Then this Question was put, That in the Preface of the Book, intitled, *The History of the last Parliament*, *began at* Westminster *the Tenth Day of* February, *in the Twelfth Year of the Reign of King* William, *Anno Domini* 1700, there are several Expressions, which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

It was Resolved in the Affirmative.

It is Resolved and Declared by the Lords Spiritual and Temporal in Parliament Assembled, That in the Preface of a Book, intitled, *The History of the last Parliament*, *began at* Westminster *the Tenth Day of* February, *in the Twelfth Year of the Reign of King* William, *Anno Domini* 1700. (written by Doctor *Drake*, as he own'd at the Bar) there are several Expressions which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That Her Majesty's Attorney-General do forthwith effectually prosecute the said Doctor *Drake* for having writ the said Paragraph.

The Proceedings and Resolution of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled, on Tuesday *the Twelfth of* May, 1702. *upon the Paragraphs contain'd in Page* 89 *and* 90, *of the Book, intitled,* Tom Double Return'd out of the Country: Or, The True Picture of a *Modern Whig*, set forth in a Second Dialogue between Mr. *Whiglove* and Mr. *Double*, at the *Rummer* Tavern in *Queen-street* *.

Die Martis, 12 *Maii*, 1702.

THE Order being Read for the Master and Wardens of the *Stationers* Company, and *John Nutt*, to attend, to give an Account of what they have done in Order to find out the Author and Printers of the Book, intitled, Tom Double *return'd out of the Country: Or, The True Picture of a* Modern Whig, *set forth in a Second Dialogue between Mr.* Whiglove *and Mr.* Double, *at the* Rummer *Tavern in* Queen-street. They were call'd in, and Mr. *Nutt* said, That Mr. *Barber*, the Printer, gave him the Book to Publish, and they withdrew.

Then the House went into Consideration of the Paragraphs in the 89th and 90th Pages of the said Book, which were read, as followeth, *viz.*

'*Whiglove*. I find we have miscarried in one great Design, the Train 'would not take, we were very hot upon it just before the Parliament 'met, all the Whig Coffee-Houses rung how necessary 'twas to break into 'the Acts of Settlement, and to exclude——

'*Double*. Mum, *Whiglove*, talk no more upon the Subject, I beseech 'you; fresh Orders are issued out, and since we are not strong enough to 'make it go, and that on the contrary it has alarm'd and provok'd all sorts 'of Men, we are now directed to say, That never any such Thing was 'intended by our Party, tho', God knows, it was the whole Discourse of 'all our Clubs. Under the Rose, this was one of those Embrio's that 'proved abortive upon the 30th of *December* last; but tho' it be not season-'able to stir in it now, never fear our abandoning a wicked Design, we 'never quite lay aside any Mischief: however, since it has already open'd 'the Eyes of a great many, and weaken'd our Interest among several of 'our own Side, whom (with Grief of Mind I speak it) we cannot work 'up to be guilty of so much Injustice, let us take all Occasions of decla-'ring, That we will not violate these Acts upon any Account whatsoever; 'which we may the more safely do, because you know 'tis our Principle, 'not to think that we are bound by any Protestations we make, either in 'Private or in Publick; and' tis one of the great Advantages we have over 'the rest of our Fellow-subjects, that we can fetter the Consciences of 'others, while our own are at perfect Liberty.'

Then it was proposed to pass the same Censure on these Passages, as was passed on Part of the Preface of Dr. *Drake*'s Book.

After Debate, the Question was put,

Whether the House shall be now adjourn'd?

It was resolv'd in the Negative.

Then this Question was proposed,

That in the Paragraphs which have been read, contain'd in the 89th and 90th Pages of the Book, intitled, Tom Double *return'd out of the Country*, &c. there are several Expressions which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

Then this Question was put,

Whether the Words, *Groundless*, *False*, *and Scandalous*, shall be left out of the Question?

It was resolved in the Negative.

Then the main Question was put,

That in the Paragraphs which have been read, contain'd in the 89th and 90th Pages of the Book, intitled, Tom Double *return'd out of the Country*, &c. there are several Expressions which are Groundless, False and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom?

It was Resolved in the Affirmative.

It is Resolved and Declared by the Lords Spiritual and Temporal in Parliament Assembled, That in the Paragraphs which have been read, contained in the 89th and 90th Pages of the Book, intitled, Tom Double *Return'd out of the Country: Or, The True Picture of a* Modern Whig, *set forth in a Second Dialogue between Mr.* Whiglove *and Mr.* Double, *at the* Rummer *Tavern in* Queen-street, there are several Expressions which are Groundless, False, and Scandalous, tending to create Jealousies in Her Majesty of Her People, and to cause great Misunderstandings, Fears, and Disputes amongst the Queen's Subjects, and to disturb the Peace and Quiet of the Kingdom.

The Resolution and Proceedings of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled, on Saturday *the Sixteenth of* May, 1702, *upon a Pamphlet, intitled,* Animadversions upon the Two last Thirtieth of *January* Sermons: One Preached to the Honourable House of Commons: The other to the Lower House of Convocation: In a Letter. *As also upon a Book, intitled,* A Sermon Preach'd on *January* the Thirtieth, 1701-2, in King *Henry* the Seventh's Chapel, before the Reverend Clergy of the Lower House of Convocation. By *W. Bincks*, D. D. a Proctor for the Diocese of *Litchfield* and *Coventry* †.

Die Sabbati, 16 *Maii*, 1702.

COmplaint being made to the House, of a Pamphlet, intitled, *Animadversions upon the Two last* 30*th of* January *Sermons*; *One Preach'd to the Honourable House of Commons: The other to the Lower House of Convocation: In a Letter.*

After Reading and Considering several Paragraphs and Places therein, and Debate thereupon; It is Resolved and Declared by the Lords Spiritual and Temporal in Parliament assembled, That the Book or Pamphlet, intitled, *Animadversions upon the Two last* 30*th of* January *Sermons*; *One Preach'd to the Honourable House of Commons: The other to the Lower House of Convocation: In a Letter*, is a Malicious, Villainous Libel, contain-

* It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Proceedings and Resolution of this House, in Relation to this Matter, be forthwith Printed and Publish'd.
Matth. Johnson, Cler' Parliamentor'.

† It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Resolution and Proceedings abovementioned, shall be forthwith Printed and Published.
Matth. Johnson, Cler' Parliamentor'.

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ing very many Reflections on King *Charles* the First of ever-bleſſed Memory, and tending to the Subverſion of the Monarchy.

It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Pamphlet, intituled, *Animadverſions on the two laſt 30th of* January *Sermons: One preached before the Honourable Houſe of Commons: The other to the Lower Houſe of Convocation: In a Letter*, ſhall be burnt by the Hands of the Common Hangman, in the Old Palace-Yard, *Weſtminſter*, on *Friday*, the 22d Day of this Inſtant *May*, between the Hours of One and Two of the Clock in the Afternoon of the ſaid Day.

To the Sheriffs of *London* and *Middleſex*,
and every of them.

Die Sabbati, 16 *Maii*, 1702 *(a)*.

THEN the Houſe took into Conſideration a Book, intituled, *A Sermon preached on* January *the 30th*, 1701-2, *in King* Henry *the Seventh's Chapel, before the Reverend Clergy of the Lower Houſe of Convocation, By* W. Binckes, *D. D. a Proctor for the Dioceſe of* Litchfield *and* Coventry *(b)*. And ſome Parts, or Paragraphs, out of the ninth, tenth, and fifteenth Pages of the ſaid Book being read, as followeth, viz.

'And firſt, As to the near Reſemblance between the Parties concerned, 'as well the Actors as the Sufferers, comparing thoſe in the Text with 'thoſe of the Day.

'And here, one would imagine, the latter were reſolved to take St. 'Paul's Expreſſion in the moſt literal Senſe the Words will bear, *And 'crucify to themſelves the Lord a-freſh*, and in the neareſt Likeneſs that could 'be, put him to an *Open Shame*. If, with Reſpect to the Dignity of the 'Perſon, to have been born *King of the Jews*, was what ought to have 'ſkreened our Saviour from Violence, here is alſo one, not only born to 'a Crown, but actually poſſeſſed of it. He was not only called *King* by 'ſome, and at the ſame Time, derided by others for being ſo called, but 'he was acknowledged by all to be a King; he was not juſt dreſſed up 'for an Hour or two in Purple Robes, and ſaluted with a *Hail King!* 'but the uſual Ornaments of Majeſty were his cuſtomary Apparel: his 'Subjects owned him to be their King, and yet they brought him before 'a Tribunal; they judged him; they condemned him; and that they 'might not be wanting in any Thing to ſet him at nought, they ſpit upon 'him, and treated him with the utmoſt Contempt. Our Saviour's de-'claring that *his Kingdom was not of this World*, might like look a Sort of 'Renunciation of his Temporal Sovereignty, for the preſent deſiring only 'to reign in the Hearts of Men; but here was nothing of this in the Caſe 'before us; here was an indiſputable, unrenounced Right of Sovereignty, 'both by the Laws of God and Man; he was the reigning Prince, and 'the Lord's Anointed: and yet, in deſpight of all Law, both Human 'and Divine, he was by direct Force of Arms, and the moſt daring Me-'thods of a flagrant Rebellion and Violence, deprived at once of his Im-'perial Crown and Life.

'The Fact of this Day was ſuch a vying with the firſt Arch-Rebel, 'the Apoſtate Angel, *Lucifer*; it was ſuch a going beyond the Old Ser-'pent in his own Way of Inſolence and Pride, that it is no Wonder if he 'then began to raiſe his Head, and ſet up for Dominion in this World, 'when thus warmed and enlivened by a fiery Zeal in ſome, and Rage in 'others, to the Degree of Drunkenneſs, thirſting after, and ſatiating 'themſelves in Royal Blood; and in which reſpect only, heated to the 'Degree of Frenzy and Madneſs, the Plea in my Text may ſeem to have 'ſome hold of them, *Father, forgive them, for they know not what they do.*'

After Debate thereupon, it being propoſed to cenſure theſe Paragraphs, the Houſe came to the following Reſolution:

It is Reſolved and Declared by the Lords Spiritual and Temporal in Parliament Aſſembled, That in the Book intituled, *A Sermon preached on* January the 30*th*, 1701-2, *in King* Henry *the Seventh's Chapel, before the Reverend Clergy of the Lower Houſe of Convocation, by* W. Binckes, *D. D. a Proctor for the Dioceſe of* Litchfield *and* Coventry; there are ſeveral Expreſſions that give juſt Scandal and Offence to all Chriſtian People.

Then it being propoſed to Burn this Sermon, this Queſtion was put, Whether this Sermon ſhall be Burnt?

It was Reſolved in the Negative.

It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Reſolution above recited ſhall be communicated to the Lord Biſhop of *Litchfield* and *Coventry*.

The Reſolution and Proceedings of the Right Honourable the Lords Spiritual and Temporal in Parliament Aſſembled, on Saturday, *the 16th of* May, 1702, *upon Two Paſſages in the Pamphlet, intituled*, I. Reaſons for Addreſſing his Majeſty to invite into *England* their Highneſſes, the *Electreſs Dowager* and the *Electoral Prince* of *Hanover*. *And likewiſe*, II. Reaſons for Attainting and Abjuring the pretended Prince of *Wales*, and all others pretending any Claim, Right, or Title from the late King *James* and Queen *Mary*, with Arguments for making a vigorous War againſt *France* (*c*).

Die Sabbati, 16 *Maii*, 1702.

COmplaint being made to the Houſe, of two Paſſages in the Pamphlet, intituled, I. *Reaſons for Addreſſing His Majeſty to invite into* England *their Highneſſes, the Electreſs Dowager and the Electoral Prince of* Hanover. And likewiſe, II. *Reaſons for Attainting and Abjuring the pretended Prince of* Wales, *and all others pretending any Claim, Right, or Title from the late King* James *and Queen* Mary. *With Arguments for making a vigorous War againſt* France. The Paſſages were read to the Houſe, and are as followeth, *viz.*

'It appears from Hiſtory, that all *free* People have ſet aſide the Chil-'dren of *Tyrants* for Reaſons of eternal and univerſal Force, as inheriting 'the Principles and Deſigns of their Parents, bearing an Affection to 'their Friends, and owing a Revenge to their Enemies, as more likely 'to graſp at a greater Power than even their Parents, the better to ſecure 'themſelves from their Diſgrace, and being under extraordinary Obli-'gations to thoſe foreign Potentates who protected or reſtored them.

XXXI. 'In fine, whether the *Abjuration* be penal or voluntary, (for 'I cannot doubt of one or the other) I hope Care will be taken that it be 'tendered, as I ſaid before, to all Manner of Perſons, not excepting the 'King's *Majeſty*, or her Royal Highneſs the *Princeſs of Denmark*. For all 'the Securities we give to them, they owe this Security to us. Not 'that I doubt either of them, from which I am the fartheſt of any Man 'in the World: But they both of them very well know what Stories 'and Surmiſes our Enemies have been actively ſpreading to amuſe and 'intimidate the People; they have whiſpered horrible Things of blind 'and clancular Bargains; but CÆSAR's Wife ought to be unſuſpected 'as well as innocent.'

It is Reſolved and Declared, by the Lords Spiritual and Temporal in Parliament Aſſembled, That there are in the Pamphlet, intituled, I. *Reaſons for Addreſſing his Majeſty to invite into* England *their Highneſſes, the Electreſs Dowager, and the Electoral Prince of* Hanover. And likewiſe, II. *Reaſons for Attainting and Abjuring the pretended Prince of* Wales, *and all others pretending any Claim, Right, or Title from the late King* James *and Queen* Mary. *With Arguments for making a vigorous War againſt* France; Aſſertions and Inſinuations ſcandalous and dangerous, tending to alienate the Affections of the Subjects of this Kingdom from her Majeſty, and to diſturb the Peace and Quiet of the Kingdom.

L. *The Evidence given at the Bar of the* House of Commons, *upon the Complaint of Sir* John Pakington, *againſt* William *Lord Biſhop of* Worceſter, *and Mr.* Lloyd, *his Son. Together with the Proceedings of the* Houſe of Commons *thereupon.* 1702. 2 A. *(d)*

Lunæ 2 die Novembris, 1702.

A Complaint being made to the Houſe by Sir *John Pakington*, againſt the Lord Biſhop of *Worceſter*, and Mr. *Lloyd* his Son, relating to the Rights and Privileges of the Houſe of Commons;

Reſolved,

That a Day be appointed to take into Conſideration the ſaid Complaint.

Ordered, That the ſame be taken into Conſideration upon *Wedneſday* the Eighteenth Day of *November* Inſtant.

Mercurii 18 *die Novembris*, 1702.

The Houſe (according to the Order of the Day) proceeded to take into Conſideration the Complaint made by Sir *John Pakington*, the ſecond inſtant, againſt the Lord Biſhop of *Worceſter*, and Mr. *Lloyd*, his Son, relating to the Rights and Privileges of the Houſe of Commons. And Sir *John Pakington* in his Place acquainted the Houſe, That he had reduced the Matter of the ſaid Complaint into ſeveral Heads, which he read in his Place, and are as follow:

I. *THAT ſoon after the laſt Parliament roſe, the Biſhop of* Worceſter *took upon him to ſend to me to deſiſt from ſtanding to be elected Knight for that County, and to threaten me, That if I would not deſiſt, he ſhould think himſelf obliged to ſpeak againſt me to his Clergy.*

II. *He ſent ſome Letters himſelf, and his Secretary ſent others, to ſeveral of his Clergy, with Directions to make what Intereſt they could againſt me in their ſeveral Pariſhes, and where they could not prevail with ſuch who voted ſingly for me in the laſt Election, to give a Vote for one or both the other Candidates, they ſhould deſire them to ſtay at Home; and in order to this his Lordſhip ſent them Copies of the Poll of their reſpective Pariſhes.*

III. *He aſperſed me to his Clergy, branding me and my Anceſtors with ſeveral Vices; and at his Confirmation and Viſitations ſolicited his Clergy to vote againſt me, repreſenting me as very unfit to ſerve in Parliament, and threatening them with his Diſpleaſure, if they did not vote againſt me.*

IV. *He aſperſed me and my Anceſtors to ſeveral of the Laity, who were his Tenants, and threatened them, That if they would not vote againſt me, they ſhould never renew any Eſtate under him, and that he would ſet ſuch Marks upon them, that his Succeſſors ſhould not ſuffer them nor their Children to renew any more.*

V. *Mr.* Lloyd, *the Biſhop's Son, aſperſed me, and gave ſcandalous Characters of me to ſeveral Freeholders, whom he ſolicited to vote againſt me, and told them, I voted for bringing in a* French *Government.*

VI. *The Biſhop's Secretary aſperſed me to ſeveral Freeholders in the like Manner, repreſenting me as unfit to ſit in the Houſe, threatening them with the Biſhop's Diſpleaſure; and ſaid they might as well vote for the Prince of* Wales *as for me.*

(a) It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Reſolution and Proceedings abovementioned, ſhall be forthwith Printed and Publiſhed. *Matth Johnſon*, Cleric' Parliamentor'.

(b) Afterwards made Dean of *Litchfield*.

(c) It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Reſolution and Proceedings abovementioned ſhall be forthwith Printed and Publiſhed. *Matth. Johnſon*, Cleric' Parliamentor.'

(d) Mercurii 25 *Die Novembris*, 1702. Ordered, That the Evidence given at the Bar of this Houſe, upon the Charge of Sir *John Pakington*, againſt *William* Lord Biſhop of *Worceſter*, and Mr. *Lloyd* his Son, be printed; together with the Proceedings of this Houſe thereupon. *Paul Jodrell*, Cl' Dom' Com'.

After which, the Witneſſes to the reſpective Heads were ſeverally called in and examined at the Bar thereunto, *viz.*

Mr. *William Norton* being examined ſaith, That he had a Letter from the Lord Biſhop of *Worceſter*'s Secretary, Mr. *Evans*, that the Biſhop would ſpeak with him; that he went accordingly that Night to wait upon his Lordſhip, and upon his attending his Lordſhip, his Lordſhip told him, That he took it unkindly that he made Intereſt for Sir *John Pakington*; That his Lordſhip had ſent his Bailiff to engage Votes for Mr. *Bromley* and Mr. *Walſh*, and he was ſorry that this Examinant ſhould be for his Enemy Sir *John Pakington*; and that his Lordſhip would ſend to Sir *John Pakington*, to deſiſt from ſtanding for Knight of the Shire; and if he would not deſiſt, his Lordſhip was to viſit his Clergy, and he would ſet Sir *John Pakington* out in his Colours: The ſaid Examinant being aſked, what Reaſons his Lordſhip gave, why Sir *John Pakington* was his Enemy; ſaid, He did not give him any Reaſons, but that his Lordſhip believed he would do any thing in his Power to ruin him.

Mr. *Charles Stephens*, Rector of *Hampton Lovet*, being examined, ſaith, That on the 30th of *June* laſt, he received a Letter from the Lord Biſhop of *Worceſter*, under his own Hand, to attend him at *Worceſter* before his Lordſhip went his Viſitation; this Examinant attended his Lordſhip accordingly, who deſired this Examinant to deliver a Meſſage to Sir *John Pakington*, to deſiſt from ſtanding for one of the Knights of the Shire; this was in the Preſence of the Chancellor: He ſaid, that Sir *John* ſhould name any body whom he pleaſed, and that his Lordſhip ſhould take it very ill if any of the Clergy voted for Sir *John Pakington*; and if any of his Tenants did, they ſhould not renew their Leaſes in his Time, and he would leave ſuch Intimation to his Succeſſors as ſhould make them of his Mind; and that if Sir *John* would not deſiſt, he ſhould be obliged to ſpeak againſt him at the Viſitation. This Examinant being asked what Reaſons the Biſhop gave for his being againſt Sir *John Pakington*, he ſaid his Lordſhip urged againſt him the Pamphlet written in Defence of the Bill againſt the Tranſlation of Biſhops: Being aſked if he knew of any that had diſperſed any of thoſe Pamphlets; he ſaid, that the Biſhop ſaid, That Sir *John Pakington*'s Servants had diſperſed them; but this Examinant ſaith, that he had none given him, but half a Dozen which were directed to him, he knows not by whom, but believes they came no further than from *Worceſter*, being brought by one *Davies* a Carrier, of *Wich*, as he thinks; being aſked ſeveral Queſtions about divers Pamphlets, if he had ſeen them, he ſaid, he had bought one at *Worceſter*, being a Vindication of the Bill againſt the Tranſlation of Biſhops, and that he had ſeen another, being a pretended Anſwer, which was ſent him in a blank Caſe from *London*, he knows not from whom, and that he never diſperſed any, being always cautious in ſuch Matters: Being aſked, if that Cover was franked with Sir *John Pakington*'s Name, he ſaid, it was not. This Examinant ſaith, That after Dinner, at the Viſitation at *Bromſgrove*, the Lord-Biſhop ſaid, every body might expect Juſtice from him, but not Favour, if they Voted for Sir *John Pakington*. Being asked, Whether the Biſhop charged him upon his Canonical Obedience, he ſaid No, but that his Lordſhip told Mr. *Bolles* of *Hagley*, who ſaid he could not vote as the Biſhop deſired him, being obliged by his Patron to Vote for Sir *John Pakington*; the Biſhop replied, And are you not obliged to me? Have you not lately ſworn Canonical Obedience? I am ſure you have. This Examinant being aſked, if he had any Living, he ſaid that Sir *John Pakington* had preſented him to *Hampton Lovet*. He ſaid further, That his Lordſhip charged ſeveral Immoralities upon Sir *John Pakington*, and being aſked the Particulars, ſaid, he charged him with Drunkenneſs, Swearing, and Whoredom. That his Lordſhip inſiſted at his Viſitation very much upon the Pamphlets, particularly that Paſſage about cutting down Wood; and his Lordſhip ſaid, that he could give a very good Account of that; and that there were divers Paſſages in the Pamphlets, reflecting upon ſeveral Biſhops. That after Dinner, at the Viſitation at *Bromſgrove* aforeſaid, his Lordſhip's Secretary, Mr. *Evans*, ſtood at the Door to endeavour to keep every body in the Room until his Lordſhip had particularly ſpoken to them, and was not willing to let any one go out but this Examinant.

Mr. *John Cheatle* being examined, ſaith, That he was at the Viſitation at *Bromſgrove*, in *July* laſt; that he met Mr. *Evans*, the Lord-Biſhop's Secretary, on the Stairs-head, who preſſed him very much to go in to his Lordſhip, which this Examinant was unwilling to do; and being deſirous to know the Buſineſs the Lord-Biſhop would ſpeak to him of, Mr. *Evans* told him, my Lord expected he ſhould vote for Mr. *Bromley* and Mr. *Walſh*. This Examinant told him, that he was engaged, for he had promiſed Sir *John Pakington*: That the Secretary told him in great Anger, That then he muſt not expect to come within his Lordſhip's Door any more. He ſays, That he is a Receiver of ſome of the Biſhop's Rents, and that he voted only for Sir *John Pakington*.

Being asked a Queſtion which related to the ſaid Election; but that being a Diſcourſe that the Lord-Biſhop had with him alone, the Examinant ſaid he was Receiver of the Biſhop's Rents, and that he deſired the Judgment of the Houſe, whether it was fit for him to relate that; and then withdrew. And the Houſe did not think fit to examine him to that Point, but called him in to other Matters.

Mr. *Thomas Wellens*, Curate of *Alfrick* and *Lulſley*, being called in and examined about a Letter ſent to him by Mr. *Evans*, the Biſhop's Secretary, Mr. *Wellens*, and the aforeſaid Mr. *Cheatle*, proved it to be Mr. *Francis Evans*, the Biſhop's Secretary's Hand. The Letter was read, and is as followeth:

Alfrick.		*Lulſley.*	
John Field	P	Edmund Kinnerd	P
Reynold Barbor	P		
William Woodcock	P		
Sam. Hall	P		
Joſ. Joyner	P		
John Gillam	P		
Richard Kendrick	P		
Walter Meeks	P		
Sam. Meeks	P		
Tho. Smith	P		
Fran. Skinner	P		
Richard Portman	P. B		
Rich. Markham	P. W		
Sam. Smith	B. W		
Chriſtopher Gorey	W		

Worceſter, 30 *June*, 1702.

Mr. *Wellens*,

'MY Lord finds that the Freeholders at *Alfrick* and *Lulſley* voted as above, the laſt Election, Twelve of them ſingly for Sir *John Pakington*. His Lordſhip does not think him a fit Perſon to repreſent the County in Parliament, for many Reaſons, and therefore deſires you'll uſe all the Intereſt you have in the Gentlemen above to vote for Mr. *Bromley* and Mr. *Walſh*, and in caſe they are ſtill engaged for Sir *John P.* if they do Vote, deſire them to give a ſecond Vote either for Mr. *Bromley* or Mr *Walſh*, or rather to ſtay at Home, and ſo not Vote at all: Whatever Service you can do in this Affair, will be very kindly taken by his Lordſhip. If there be any other Freeholders that did not Vote at laſt Election, his Lordſhip deſires you'll endeavour to prevail with them to Vote for Mr. *Bromley* and Mr. *Walſh*. I am

Your Friend and Servant,

FRA. EVANS.

For the Rev. Mr. *Wellens*, Curate of *Alfrick* and *Lulſley*. Theſe.

The ſaid Mr. *Wellens* being farther examined, ſaith, That ſome Time after, he met Mr. *Evans* at *Worceſter*, and told him he had received his Letter, but that it came too late, his Neighbours being engaged before.

Mr. *Thomas Pountney*, Rector of *Fladbury*, being examined, ſaith, That he did receive a Letter from the Lord-Biſhop of *Worceſter*, by one *Taylor*, an Apparitor; and the Letter being ſhewed him, he owned it to be the ſame Letter, ſigned by his Lordſhip's own Hand. He ſaith, That he ſhewed the Letter to Mr. *Hodge*, as the Biſhop deſired him in the ſaid Letter. The Letter was read, and is as follows, *viz.*

Hartlebury, *July* 29, 1702.

SIR,

'I Think I have more Reaſon to hope for ſomething of Conſideration from you, than from moſt others of the Clergy of this Dioceſe, and ſomething alſo more from the Freeholders in your Pariſh, than in moſt other Parts of the County; and therefore I thought I had Reaſon to take it ill of your Neighbours, that they ſhould give their Votes as they did, for the chooſing of Sir *J. Pakington* to be Knight of the Shire, when, in order to that very Election, he had publiſhed Two Libels, full of horrible Lies, againſt myſelf, and ſeveral others of the Biſhops, that had never given him the leaſt Provocation. This grieved me much, but yet I had wherewith to comfort myſelf, in believing that thoſe Libels might not have come to their Knowledge; tho' as I ſince underſtand great Care was taken by Sir *John*'s Agents to publiſh them all over your Neighbourhood. But now, ſince, I underſtand there is a Third Libel come abroad, which is written againſt me in particular. The declared Cauſe of it is not only my oppoſing Sir *J. P.*'s Election, which, after my coming into the Country, and finding his Libels publiſhed among my Tenants by his Servants, I ſent him Word I thought myſelf obliged to do, unleſs he would be pleaſed to deſiſt from ſtanding, as I earneſtly deſired him to do more than once: But this Author hath found, that I was the Writer of a printed Half Sheet, called, *The Character of a Churchman*, and that this was written againſt Sir *J. P.* for hindering his Election; and for this he ſcourges me moſt unmercifully, with ſuch a Tongue as that St. *James* deſcribes. For that *Character of a Churchman*, I do declare to you in the Preſence of God, That I neither writ it, nor know the Author of it; but I certainly know, that Sir *J. P.* is not once mentioned in it, nor had I at the Time when that was printed any Breach with Sir *J. P.* nor Occaſion to do this with reſpect to the Election, for it was printed before I came to *London*, and that was before the Diſſolution of the former Parliament, which if I had foreſeen, I had certainly ſtaid longer in the Country. After all this, it is true that I ſent a great Number of thoſe Half Sheets into the Country, as I did of ſuch other ſmall Things, upon ſeveral Accounts. They were ſent chiefly on the Account of our unhappy Differences in Convocation, and for promoting the moſt pious Deſigns of Reformation. On this laſt Account it was that I ſent this *Character of a Churchman*, without making any Reflection upon any particular Perſon. I did indeed know, that the Devil would be mad at me for it, and now I have found the Effect of his Wrath: He hath ſet a Son of his to write againſt me, which I thank God is the worſt he can do. This Account I have given you of this Third Libel, in hopes it may have ſome Effect upon you and your Neighbour Mr. *Hodge*, to whom I deſire you to ſhew what I have written. I hope you will both of you conſider whether any ſuch Promiſe as that you have made to this Gentleman, to make him your Repreſentative in Parliament, can oblige you to any thing elſe but Repentance of your having made ſuch a Promiſe, and to bring forth Fruits meet for Repentance. For my Part, I leave this upon your Souls, deſiring you both to do in this Matter as you think you can beſt anſwer it to God at the great Day, which I doubt not you believe, and expect as well as I. I pray God direct you. I am

Your Faithful Friend
and Dioceſan,
W. WORCESTER.

The Encloſed is a Liſt of the Voters from *Fladbury* at the laſt Election. I pray God direct them this Time to vote better, or to ſtay away.

Fladbury.					
Hen. Cocks	P	John Bachelor	P	Rich. Tayler	P
John Knowles	P	Tho. Day	P	Rich. Tandy	P
William Cole	P	H. M. T. Woodward	P	H.M. Arth. Charlet	P
Tho. Weſton	P	H. Wm. Tomlins	P	H.M. Rich. Farr	P
Richard Hilyard	P	M. John Francis	P	B. Tho. Barkes	B.W
Joſ. Ganderton	P	M. Wm. Gibbs	P	Tho. Hornblow	P

James

James Benſon	P	John Hopkins	P	B. Will. Abry	P
H. M. Tho. Sanders	P	M. Will. Weſton	P	Will. Buſhell	P
Edward Marſhall	P	S. G. Jeffrey Hopkins	P	A. M. Rob. Wright	P
John Bluck	P	M. Hen. Gibbs	P	Bart. Hopkins	P
John Smith	P	John Hopkins	P	St. B. John Moor	P
Arth. Gutteridge	P	Will. Kings	B. W	Richard Buſhell	P
John Weaver	P	Will. Haywood	B	John Bluck	P
Will. Francis	P	H. M. Joſ. Charlet	P.B	Tho. Francis	P
Cl. Perks	P	S. B. John Sale	P		

To the Reverend Mr. Poutney, *Rector of* Fladbury.

This Examinant being aſked about Pamphlets, he ſaith, That *The Character of a Churchman* was brought to him by the Churchwardens, who received it with the Proclamation from the Apparitor.

Sir *John Pakington* produced another Letter, directed, *To the Reverend Mr.* Mugg, *Rector of* Inkberrow; which Mr. *Cheatle* aforeſaid proves to be the Lord Biſhop's Hand. The ſaid Letter from the Biſhop was encloſed in a Letter from Mr. *Mugg* to Sir *John Pakington*, and delivered by Mr. *Mugg* to Sir *John Pakington*'s Servant, who delivered it to his Maſter. The Letters are as follow, *viz.*

'*SIR*,

'I Have here encloſed the Biſhop of *Worceſter*'s Letter, which deterred me from coming to your laſt Election, againſt my own moſt earneſt Inclination, to attend and promote it as formerly I did; and refer to Mr. *Appletree*, and other Gentlemen, to ſay what Influence it had more than my ſingle Vote, with Reſpect to my Age and longer Reſidence in the County than others of the Clergy. But this Biſhop has been ſo ſevere in promoting and abetting unjuſt Proſecutions againſt me, to my vaſt Damage and Loſs of Eſtate in another Place. And ſince his coming into this Dioceſe have I juſt Cauſe to complain of that Want of Diſcipline, which from his Conſiſtory Court ſhould have been exerted againſt Lewdneſs in my Pariſh; which I take worſe than his repeated Endeavours to deprive me of my Eſtate. I would lay the Matters in particular, and give perſonal Teſtimony in ſeveral Inſtances, if I may be permitted a further Day. But *Thurſday* next muſt attend a Commiſſion then held at *Nottingham:* Afterwards, as I have Intimation, all Excuſes and Delays ſet aſide, ſhall be ready to appear, not only to ſerve you in this Cauſe, but for neceſſary vindicating the Right of the Commons, and that Property of the Subject that is infringed by ſuch Means and Methods as I know this Biſhop has uſed. I am, Sir,

Your moſt Faithful,

Humble Servant,

15 *Nov.* 1702. HEN. MUGGE, Vicar of *Inkborough.*'

To the Honourable Sir John Pakington, *Bart. Member of Parliament, humbly preſent.*

'*SIR*, *July* 27, 1702.

'YOU cannot but have heard, and probably have ſeen, how the Biſhops of this Church in general, and Five or Six of them in particular, have been abuſed with impudent Lies in two Libels that were publiſhed by Sir *John Pakington*, almoſt a Year ſince, in order to his laſt Election. At that Time I had not given him the leaſt Provocation; and for the other abuſed Biſhops, few of them knew his Face. Since that Time, finding at my Return from *London*, where I was all the while he was libelling me in the Country, that he had publiſhed theſe Libels, ſome of them with his own Hands, and the reſt by his Agents, I could not but think myſelf obliged by all honeſt Ways to oppoſe his Election, if he would ſtand; which I ſent to him three Times to let him know, and to deſire he would forbear.

'Hereupon there comes out a third Libel againſt me, which I have only ſeen, but could not get a Copy of it. I never ſaw any thing writ with ſuch a furious Rage of railing, and ſcoffing, and lying; which, I thank God, can do me no Hurt, nor will it do him Service, if I may ſo call it, in promoting his Election, which I think would be the greateſt Hurt that could happen to him.

'It is for the preventing of this that I write to my Friends, earneſtly to deſire them to get what Votes they can for Mr. *Bromley* and Mr. *Walſh*; and to keep away as many as they can of them that will vote for Sir *John Pakington*.

'Your Diligence in this Matter will lay a very great Obligation upon,

Sir,

Your Faithful Friend,

and Dioceſan,

W. WORCESTER.'

'I have ſent you the encloſed, to ſhew you how the Votes of your Pariſh went at the laſt Election.

To the Rev. Mr. Mugg, *Rector of* Inkberrow.

Inkberrow.

John Philips	B	Edward Harriot	P	Robert Boney	B
John Bennet	P	Sam. Tandy	P	William Wren	B
John Gore	W	Rob. Biddle	P	Robert Willis	P
Job Watts	P	Nich. Hoblins	P	Tho. Briſtow	P
William Walford	P	Tho. Hopkins	P	Richard Dewce	P
Geo. Darby	P	Geo. Gore	P.W	Henry Glover	P
Rich. Eaton	P	John Churchly	P	Tho. Tomkins	P.B
William Barber	B.W	John Appletree	P.B	Tho. Ganderton	P
Hen. Hunt	P	John Sheldon	P	Walter Steward	P
Tho. Huntles	P	Tho. Walford	P.B	John Harbage	P
Hen. Smith	P	Tho. Marſhal	P.B	James Hemmings	P
Edward Millard	P	George Court	B	William Harvey	B.W
Edward Griffin	P	Hen. Dyſon	B	Hum. Eaton	P
William Mallard	P	William Soley	P	Mich. Jones	P.B
Tho. Lucas	P.B	Robert Willis	P	William Hunt	P.B

Mr. *Thomas Hodge*, Clerk, being examined, ſaith, That the Lord Biſhop of *Worceſter* ſollicited him to vote againſt Sir *John Pakington*; and then would have perſuaded him to ſtay at home: But he ſaid, he had given his Promiſe to Sir *John*. His Lordſhip told him, that if he voted for Sir *John Pakington*, he ſhould think him led by wicked and carnal Principles. His Lordſhip ſaid, that Sir *John* had aſperſed him: This Examinant ſaid, he hoped not. His Lordſhip told him of a Book, and ſaid, he believed he had it; which this Examinant denied. His Lordſhip proceeded then to give ſome Account of the Book, and to vindicate himſelf; and ſaid, that Sir *John Pakington* was a Whoremonger, Drunkard, and Swearer; and no ſuch were fit to be Law-Makers. This Examinant told his Lordſhip, he was engaged to go to give his Vote: The Biſhop ſaid, That Sir *John Pakington* had aſperſed him and other Biſhops: And in Concluſion his Lordſhip ſaid, Whoever voted for Sir *John Pakington*, he ſhould not think him fit to be a Clergyman. And when his Lordſhip renewed the Diſcourſe another time, this Examinant told him of his Promiſe: His Lordſhip ſaid, It was an ill Thing, and that this Examinant couid not think himſelf obliged to do an ill Thing. Being aſked, if the Biſhop did urge any thing of Canonical Obedience; he anſwered, that he ſaid nothing of it.

Mr. *William Bolles* of *Hagley*, being examined, ſaith, That at the Viſitation at *Bromſgrove*, the Lord-Biſhop of *Worceſter* told this Examinant, That being now come into his Lordſhip's Dioceſe, he expected he ſhould not give his Vote for Sir *John Pokington*; and if he did, he muſt expect no Favour from his Lordſhip. This Examinant told his Lordſhip that he had great Obligations to his Patron, to whom he had promiſed to vote for Sir *John Pakington*. The Biſhop told him, that he had Obligations to him, and that he had lately ſworn Canonical Obedience to him. This Examinant ſaid to the Biſhop, That Sir *John Pakington*'s Family had been always of great Repute; and aſked the Biſhop his Opinion of the Lady *Pakington*, who was ſaid to be the Author of *The Whole Duty of Man*; his Lordſhip replied, That Lady was a very excellent Woman; but that Sir *John* had inherited the Vices of the Males of his Family, but none of the Virtues of the Females. Being aſked, whether the Biſhop had given him any Preferment; he ſaid, his Lordſhip had given him a ſmall *Prebend* in the Church of *Litchfield*.

Mr. *Thomas Gibſon* of *Perſhore* being examined, ſaith, That the Lord Biſhop of *Worceſter* firſt ſpoke to him at the Confirmation at *Perſhore*, about three Days before the Viſitation at *Eveſham*, concerning Voting againſt Sir *John Pakington*; and ſollicited him much to vote againſt him. The Biſhop told him, That Sir *John* was a very ill Man, and very unfit to repreſent the County. He told his Lordſhip, he was under an Obligation, having given his Word. The Biſhop ſaid, that if this Examinant gave his Vote for Sir *John Pakington*, he ſhould think that this Examinant thought his Lordſhip not fit to be his Biſhop. After this, at the Viſitation at *Eveſham*, the Lord-Biſhop called this Examinant before the whole Clergy, and aſked him if he had conſidered of what he had ſpoke to him at *Perſhore?* He told his Lordſhip, that he hoped he had been ſatisfied with his Anſwer: His Lordſhip ſaid, he was not; and added, that if this Examinant voted for Sir *John Pakington*, he ſhould look upon him to be the pooreſt, wretchedeſt, vileſt, deluded Hypocrite in the World; and that they may know Sir *John Pakington*'s Party, for the Papiſts and Quakers were for him: This Examinant replied, The Papiſts have no Votes, and the Diſſenters and Fanaticks are of your Lordſhip's Side.

Mr. *William Thomas*, Clerk, being examined, ſaith, That he did receive a Letter from Mr. *Evans*, the Lord-Biſhop's Secretary, to vote for Mr. *Bromley* and Mr. *Walſh*; and that Mr. *Evans* ſaid, that if this Examinant voted for Sir *John Pakington*, it would be taken to be in oppoſition to the Lord-Biſhop. This Examinant did alſo receive a Letter from Mr. *Lloyd*, the Biſhop's Son, to the ſame purpoſe; adding further, that Sir *John Pakington* was no Friend to the Church.

Mr. *William Norton* was again called in, and being examined, ſaith, That the Lord-Biſhop of *Worceſter* ſent for him, and preſſed him to give his Vote, and uſe his Intereſt for Mr. *Bromley* and Mr. *Walſh:* This Examinant told his Lordſhip, he had given his Word to vote for Sir *John Pakington:* His Lordſhip ſaid, Sir *John* was not a Man fit to ſit in the Houſe of Commons; That he was a Man that ſtrikes at the Government; That he was debauched and lewd, and ſo was his Father and Grandfather; That his Father had filled him ſo full of Jacobitiſm, that it could not be rooted out: This Examinant ſaid, That he thought Sir *John Pakington* was a True Church of *England* Man as by Law eſtabliſhed; his Lordſhip replied, That he was of the Prince of *Wales*'s Church. At another Time his Lordſhip called this Examinant to him, and aſked him if he had conſidered of what he had ſaid; this Examinant ſaid he had, but he could not depart from his Word which he had given. His Lordſhip ſaid, Have not I ſhewed you Kindneſs in renewing your Leaſe? He replied, It was a very hard Fine he had paid. The Biſhop ſaid, Hard or eaſy, he ſhould never renew again, as long as he lived; and that he would put ſuch a Mark upon him, that he ſhould never renew it in his Succeſſor's Time. A few Days after, Mr. *Evans*, the Biſhop's Secretary, ſollicited this Examinant to vote againſt Sir *John Pakington*, or if not, to ſtay at home, and not vote at all, or elſe he ſhould diſoblige the Lord-Biſhop; and added, If you do vote as his Lordſhip would have you, it will be ſomething in your Way, for his Lordſhip would bear the Charge of a Law-Suit this Examinant was engaged in.

Mr. *Robert Fidkin* being examined, ſaith, That ſome time before the laſt Election, the Lord Biſhop of *Worceſter* ſent for him on a *Sunday* in the Evening, and told him, he was reſolved to make all the Oppoſition he could to Sir *John Pakington* in this Election, and if any of his Tenants voted for Sir *John Pakington*, they ſhould never renew their Eſtates any more as long as he lived. He told his Lordſhip, he could not vote againſt Sir *John Pokington*, becauſe he had promiſed his Vote for Sir *John Pakington*; but to oblige his Lordſhip, he was willing to ſtay at home. His Lordſhip anſwered, he had as lieve he

he ſhould run a Sword againſt him, as offer him that Affront; ſtaying at home ſhould not ſerve his turn: That unleſs this Examinant would vote againſt Sir *John Pakington*, he ſhould never renew any thing with him; and he would ſet ſuch a Mark upon him to ſhew his Succeſſors, that neither this Examinant, nor any of his, ſhould ever renew their Eſtates any more. This Examinant anſwered, My Lord, you have often told me, that I and my Anceſtors have held our Eſtate under the Biſhoprick for many Hundred Years, as appears by your Books; and I hope your Lordſhip will not do ſo ill a thing as to ruin me and my Children: His Lordſhip replied, It is your own Fault, you may thank yourſelf for it. Being aſked, Who he voted for? He ſaid, for Sir *John Pakington* only.

Mr. *Robert Wilmot* being examined, ſaith, That preſently after Mr. *Lloyd*, the Lord Biſhop's Son, came from *London*, before the laſt Election, he ſent for this Examinant, and preſſed him to give his Vote for Mr. *Bromley* and Mr. *Walſh:* This Examinant told him, that he had promiſed Sir *John Pakington* already. Mr. *Lloyd* told him, he was ſorry; but he muſt not give him his Vote, for he was unfit to be a Parliament Man, for he was a Whoremonger and a Drunkard: He told this Examinant then he muſt engage to ſtay at home and not vote; and bid him conſider of it, and come to him again. Accordingly this Examinant went to Mr. *Lloyd* on *Monday*, who aſked him if he had altered his Reſolution of voting for Sir *John Pakington:* This Examinant inſiſted, that he had given his Promiſe: Mr. *Lloyd* told him he was acquitted from that Promiſe; for Sir *John* was a very unfit Perſon: That he inherited his Father's and Grandfather's Vices, and not his Grandmother's Virtues: That he would have him ſtay at home, and pretend Buſineſs; and then he would have perſuaded him to pretend to be ſick. But this Examinant ſtill inſiſted that he had given his Promiſe to Mr. *Winington*, to vote for Sir *John Pakington*. Mr. *Lloyd* then told this Examinant, That Sir *John Pakington* voted for bringing in a *French* Government, and ſo did Mr. *Winington*, and all that Party: And if this Examinant did not pleaſe the ſaid Mr. *Lloyd* in his Voting, this Examinant muſt never come near him more.

At the time of the Election Mr. *Lloyd* came to this Examinant, at the Booth where the Election was, and told him, he was better than his Word, for he had not only voted for Sir *John Pakington*, but made Intereſt for him; and further told this Examinant, He would be even with him. And accordingly, when this Examinant was Hunting with him after the Election, he ſent his Servants and broke open this Examinant's Stable-Door, and took away his Setting-Dog, and his Gun and Nets, which this Examinant had Leave from him to keep in the Lord Biſhop's Manor, and the ſaid Mr. *Lloyd* had often made uſe of them for his own Diverſion: And when he complained to Mr. *Lloyd* about it, he reproached this Examinant for having voted and made Intereſt for Sir *John Pakington*; and reminded him of his Promiſe at the Election, That he would be even with him. This Examinant further ſaid, That he had been, before the Dog was taken, to wait upon the ſaid Mr. *Lloyd*, and offered him to put away his Dog, Gun and Nets, if they gave him any Offence; and that Mr. *Lloyd* ſaid, he need not do that, that thoſe were Trifles; and therefore this Examinant thought he would not have ſeized his Dog: Mr. *Lloyd* replied, If I had told you what I intended, you would have ſent your Dog away. This Examinant being aſked, Whether there was any Warrant for breaking open his Stable, ſaid, That he underſtood Mr. *Soley* had granted a Warrant to take his Dog and Nets; but that there was no Conſtable with them when they broke open the Door.

Mr. *Richard Griffin* being examined, ſaith, That Mr. *Lloyd*, the firſt *Sunday* after he came home, aſked this Examinant whether he had promiſed his Vote for any one, and for whom? He replied, he had promiſed Sir *John Pakington*. Mr. *Lloyd* told this Examinant he did very ill to promiſe before the Lord Biſhop came down; and that he ſhould have my Lord's ill Will if he voted for Sir *John Pakington*, for he was not a fit Man to ſit in Parliament, for he aims to bring in a *French* Government. Four or five Days before the Election, Mr. *Lloyd* ſent to this Examinant again, and deſired him to vote for Mr. *Bromley* and Mr. *Walſh*. This Examinant replied, that he ought to be as good as his Word, having promiſed Sir *John Pakington*. Mr. *Lloyd* then told him, he ſhould have the Lord Biſhop's ill Will, and would have him ſtay at home. This Examinant then ſaid, he would go, becauſe he had promiſed. Upon that Mr. *Lloyd* replied, If you do go, I wiſh you may lie lame a Month after it. At another time, Mr. *Evans*, the Lord Biſhop's Secretary, deſired this Examinant to ſtay at home, and not appear for Sir *John Pakington*, for the Biſhop would be very angry with him if he ſhould. This Examinant further ſaith, that he had taken in a Piece of Land, and that Mr. *Evans* told this Examinant, that ſince he would not pleaſe my Lord Biſhop in voting againſt Sir *John Pakington*, he would throw open his Incloſure; and accordingly the ſaid Incloſure was twice thrown open, and his Quick Hedge taken away: And that one *Gregſon*, a Servant of the Biſhop's, told this Examinant that he did it by Mr. *Evans*'s Order.

John Harwood being examined, ſaith, That ſome few Days before the laſt Election, there was a Meeting of ſome Neighbours, where Mr. *Evans*, the Biſhop's Secretary, was preſent. Mr. *Evans* told the Company, they were all honeſt Men of one mind, except *Harwood*, pointing to this Examinant; for, ſays he, he is the only Man that will vote for Sir *John Pakington*, who is not fit to be a Parliament Man, for he is a Drunkard and a Lover of Women: Which put this Examinant into a Paſſion, and cauſed him to ſwear; and the ſaid Mr. *Evans* pretended to number the Oaths by his Buttons. Afterwards the ſaid Mr. *Evans* ſent the Biſhop's Keeper in Mr. *Evans*'s Name, to fetch this Examinant to him, who told him, he muſt pay five Pounds for Swearing, but if he would vote for Mr. *Bromley* and Mr. *Walſh*, he would remit it. This Examinant told him, he would conſider of it. Mr. *Evans* told him, he had as good vote for the Prince of *Wales* as for Sir *John Pakington*. Being aſked, who told him he would remit the Five Pounds; he anſwered, Mr. *Evans*.

Thomas Twitty, Gent. being examined, ſaith, That the Day before the laſt Election, being in the College Church at *Worceſter*, juſt as his Lordſhip went out of the Church, Mr. *Evans* the Biſhop's Secretary came to this Examinant, from his Lordſhip, and told him, That his Lordſhip hoped this Examinant would not vote for Sir *John Pakington*, for that Sir *John* was a very ill Man, and voted ill in the Houſe of Commons. This Examinant replied, if he voted at all, he ſhould vote ſingly for Sir *John Pakington*. And this Examinant aſked Mr. *Evans*, What was the Reaſon his Lordſhip made ſuch Intereſt againſt Sir *John Pakington*. He told him, that Sir *John Pakington* had abuſed his Lordſhip; and aſked this Examinant if he had ſeen *The Character of a Churchman*, and *Of a Low Churchman*. This Examinant aſked him, if the Lord Biſhop had wrote *The Character of a Churchman:* He ſaid, he could not tell, but that his Lordſhip had ſeen and approved it; and that his Lordſhip did not think Sir *John Pakington* a fit Perſon to repreſent the County. And then he was ordered to withdraw.

Sir *John Pakington* inform'd the Houſe, That he had ſeveral other Perſons to ſpeak to the ſame Particulars that the Witneſſes had already given their Evidence to: But that having detain'd the Houſe ſo long already, he would ſubmit what his Witneſſes had ſaid to the Judgment of the Houſe, and ſo withdrew.

Whereupon the Houſe, after mature Conſideration, came to the following Reſolutions:

Reſolved Nemine Contradicente,

That Sir *John Pakington* has by Evidence fully made out the Charge which he Exhibited againſt the Lord Biſhop of *Worceſter*.

Reſolved Nemine Contradicente,

That Sir *John Pakington* has by Evidence fully made out the Charge againſt Mr. *Lloyd*, the ſaid Lord Biſhop's Son.

Reſolved,

That it appears to this Houſe, That the Proceedings of *William* Lord Biſhop of *Worceſter*, his Son, and his Agents, in order to the hindering of the Election of a Member for the County of *Worceſter*, has been Malicious, Unchriſtian, and Arbitrary, in high Violation of the Liberties and Privileges of the Commons of *England*.

Reſolved,

That an humble Addreſs be preſented to Her Majeſty, That ſhe will be graciouſly pleaſed to remove *William* Lord Biſhop of *Worceſter* from being Lord Almoner to Her Majeſty *.

Ordered,

That the ſaid Reſolution and Addreſs be preſented to Her Majeſty by ſuch Members of this Houſe as are of Her Majeſty's moſt Honourable Privy-Council.

Ordered,

That the further Conſideration of the Matter relating to the Lord Biſhop of *Worceſter*, be adjourned till this Day Sevennight.

Ordered,

That Mr. Attorney-General do proſecute Mr. *Lloyd*, the Lord Biſhop of *Worceſter*'s Son, for his ſaid Offences, after his Privilege as a Member of the Lower Houſe of Convocation is out.

Veneris 20 *die Novembris*, 1702.

Mr. Comptroller reported to the Houſe, That their Reſolution and Addreſs to her Majeſty for the removing *William* Lord Biſhop of *Worceſter*, from being Lord Almoner to Her Majeſty, had been preſented to Her Majeſty; and that Her Majeſty was pleaſed to give this moſt gracious Anſwer:

I AM very ſorry that there is Occaſion for this Addreſs againſt the Biſhop of Worceſter: *I ſhall order and direct, that he ſhall no longer continue to ſupply the Place of Almoner, but I will put another in his Room to perform that Office.*

Reſolved,

That the moſt humble Thanks of this Houſe be returned to Her Majeſty, for Her Majeſty's moſt Gracious Anſwer to their Addreſs relating to *William* Lord Biſhop of *Worceſter*.

Ordered,

That Mr. Comptroller of Her Majeſty's Houſehold do return the ſaid moſt humble Thanks of this Houſe to Her Majeſty.

Mercurii 25 *die Novembris*, 1702.

The Order of the Day for taking into further Conſideration the Matter relating to the Lord Biſhop of *Worceſter*, being read;

Ordered,

That the Evidence given at the Bar of this Houſe, upon the Charge of Sir *John Pakington* againſt *William* Lord Biſhop of *Worceſter*, and Mr. *Lloyd* his Son, be printed; together with the Proceedings of this Houſe thereupon.

Ordered,

That the Clerk's Books in relation to the ſaid Evidence be examined: And that *Mr. Speaker* do take Care of the Printing the ſaid Evidence and Proceedings.

Ordered,

That the further Conſideration of the Matter relating to the Lord Biſhop of *Worceſter* be adjourned till this Day Sevennight.—The further Conſideration of this Affair was twice adjourn'd, and then dropt.

* The Lords, alarm'd at theſe warm Proceedings of the Commons, againſt a Member of their Illuſtrious Aſſembly, and one who was eminently conſpicuous for his Piety, Charity, and Learning, did on the 19th agree upon an Addreſs to the Queen, wherein they humbly took Leave to repreſent to her Majeſty, "That it is the undoubted Right "of every Lord of Parliament, and of every other Subject of *England*, to have an Opportunity of making his Defence, before he ſuffer any ſort of Puniſhment; and there- "fore humbly deſired Her Majeſty, That ſhe would be pleaſed not to move the Lord Biſhop of *Worceſter* from the Place of Lord Almoner, nor to ſhew any Mark of her "Diſpleaſure towards him, 'till he be found guilty of ſome Crime, by due Courſe of Law." Which being preſented to the Queen on the 20th, Her Majeſty made the following Anſwer:

I agree that every Peer and Lord of Parliament, and indeed every other Perſon, ought to have an Opportunity of being heard, to any Matters objected againſt him, before he be puniſhed. I have not yet received any Complaint of the Biſhop of Worceſter, *but I look upon it as my undoubted Right to continue or diſplace any Servant, attending upon my own Perſon, when I ſhall think proper.*

The ſame Day the Lords Reſolved and Declared unanimouſly, "That no Lord of that Houſe ought to ſuffer any ſort of Puniſhment, by any Proceedings of the Houſe of "Commons, otherwiſe than according to the known and ancient Rules and Methods of Parliament." On the other Hand, Sir *Edward Seymour*, Comptroller of Her Majeſty's Houſehold, having attended the Queen with the Reſolution and Addreſs of the Commons, for the removing the Biſhop of *Worceſter* from being Lord Almoner to Her Majeſty, ſhe was pleaſed to anſwer *ut ſupra*. *Annals of Queen Anne*, Vol. I. Page 145, 146.

LI. *Proceedings in the* Houſe of Commons, Houſe of Peers, *and in the Court of* Queen's-Bench, *in the Great Caſe of* Ashby *and* White, &c. 1703, 1704, 2 & 3 Ann. Reg.

MATTHEW ASHBY, having commenc'd and proſecuted an Action at Common Law againſt *William White*, Mayor of *Aylesbury*, and others, the Conſtables of that Town, for refuſing to receive his Vote at an Election of Burgeſſes to ſerve in Parliament, for the ſaid Borough; but being caſt, he brought a Writ of Error into the Houſe of Lords, who, upon ſtrict Examination of Witneſſes, and upon mature Deliberation, gave Judgment in Favour of *Aſhby*. The Commons looking upon theſe Proceedings as an Incroachment on their Privileges, proceeded as follows.

Debates of the Houſe of Commons, upon the Great Queſtion, Whether an Action lies at Common Law for an Elector, who is denied his Vote for Members of Parliament?

Lunæ 17 *die Januarii*, 1703.

The Houſe being inform'd, That there had been an Extraordinary Judgment given in the Houſe of Lords upon a Writ of Error from the Court of Queen's-Bench, in a Cauſe between *Matthew Aſhby* and *William White*, wherein the Privileges of the Houſe were concerned, appointed ſome of their Members to ſearch the Journals of the Houſe of Lords as to their Proceedings upon the ſaid Writ of Error, and to report the ſame to the Houſe.

They alſo ordered the ſame Members to inſpect the Journals of the Houſe of Lords, as to what they had done formerly in the Caſe of *Soame* and *Barnardiſton*; and likewiſe to report that Matter to the Houſe.

Martis 18 *die Januarii*, 1703.

The Houſe ordered, that the Members who were appointed to ſearch the Journals of the Houſe of Lords as to their Proceedings upon a Writ of Error from the Court of Queen's-Bench, in the Cauſe between *Aſhby* and *White*, ſhould likewiſe ſearch the ſeveral Offices of the Court of Queen's-Bench, for the Record of the Judgment, and all other Proceedings there in that Cauſe, and report the ſame to the Houſe.

Jovis 20 *die Januarii*, 1703.

Ordered, That the Report, with relation to the Proceedings of the Houſe of Lords and Court of Queen's-Bench, in the Caſe of *White* and *Aſhby*, ſhould be made on the morrow Morning.

Veneris 21 *die Januarii*, 1703.

Mr. *Freeman* reported, That the Members appointed to ſearch the Lords Journals, touching their Proceedings upon a Writ of Error from the Court of Queen's-Bench, in a Caſe between *White* and *Aſhby*, and what the Lords had done in the Caſe of *Soame* and *Barnardiſton*, had ſearch'd the ſame accordingly; and he read in his Place what they found therein, and he deliver'd the ſame at the Table, where the ſame was read. And

Mr. *Brewer* alſo reported, That the Members appointed had alſo ſearch'd the Offices of the Court of Queen's-Bench, for the Judgment and Proceedings there in the Caſe of *Aſhby* and *White*, and had obtain'd a Copy of the Record of the Judgment, which he delivered in at the Table.

A COPY of the Record inter Ashby & White, & al.

Placita coram Domino Rege apud Weſtmonaſterium de Termino Sancti Hilarii, Anno Regni Domini Willielmi Tertii, nunc Regis Anglie, &c. decimo tertio, Rotulo 460.

Bucks, ſs. MATTHEUS ASHBY ponet loco ſuo Robertum Greenway juniorem Attornatum ſuum verſus Willielmum White, & Richardum Talboys, Willielmum Bell, & Richardum Heydon, de placito tranſgreſſionis ſuper Caſum.

ſs. Willielmus White, Richardus Talboys, Willielmus Bell, & Richardus Heydon ponunt loco ſuo Johannem Burnham Attornatum ſuum verſus Mattheum Aſhby de placito predicto.

ſs. Memorandum quòd alias ſcilicet Termino ſancti Michaelis ultimo preterito coram Domino Rege apud Weſtmonaſterium venit Mattheus Aſhby per Robertum Greenway juniorem Attornatum ſuum & protulit hic in Curia dicti Domini Regis tunc ibidem quandam Billam ſuam verſus Willielmum White, Richardum Talboys, Willielmum Bell & Richardum Heydon, in cuſtodia Mareſchalli, &c. de placito tranſgreſſionis ſuper Caſum, & ſunt pleg. de proſequendo ſcilicet Johannes Doe & Richardus Roe: quæ quidem Billa ſequitur in hæc verba; ſcilicet Bucks ſſ. Mattheus Aſhby queritur de Willielmo White, Richardo Talboys, Willielmo Bell & Richardo Heydon, in cuſtodia Mareſchalli Mareſchalſiæ Domini Regis coram ipſo Rege de exiſtentibus pro eo, videlicet quòd cum viceſimo ſexto die Decembris Anno Regni Domini Willielmi Tertii nunc Regis Anglie, &c. duodecimo è Curia Cancellarie ipſius Domini Regis nunc apud Weſtmonaſterium in Comitatu Middleſexie emanavit quoddam breve ipſius Domini Regis nunc tunc Vicecomiti Comitatus Bucks predicti directum, recitando quod dictus Dominus Rex de adviſamento & aſſenſu Concilii ſui pro quibuſdam arduis & urgentibus negotiis eundem Dominum Regem ſtatum & defenſionem Regni ſui Anglie & Eccleſie Anglicane concernentibus quoddam Parliamentum ſuum apud Civitatem ſuam Weſtmonaſterii ſexto die Februarii tunc proximo futuro teneri ordinaverit & ibidem cum Prelatis Magnatibus & Proceribus dicti Regni ſui colloquium habere & tractatum; Idem Dominus Rex nunc eidem tunc Vicecomiti Comitatus Bucks per dictum breve preceptum firmiter injungens quòd facta Proclamatione in proximo Comitatu ſuo poſt receptionem ejuſdem brevis tenenda de die & loco predictis duos Milites gladiis cinctos magis idoneos & diſcretos Comitatus predicti & qualibet Civitate Comitatus illius duos Cives & de quolibet Burgo duos Burgenſes de diſcretioribus & magis ſufficientibus libere & indifferenter per illos qui hujuſmodi Proclamationibus interforent juxta formam Statuti inde editi & proviſi eligi & nomina eorundem Militum Civium & Burgenſium ſic eligendorum in quibuſdam Indenturis inter ipſum tunc Viceeomitem & illos qui hujuſmodi electionibus interforent inde conficiendis licet hujuſmodi eligendi preſentes forent, vel abſentes, inſeri, eoſque ad dictos diem & locum venire faceret; ita quòd iidem Milites plenam & ſufficientem poteſtatem pro ſe & Communitate Comitatus illius ac dicti Cives & Burgenſes pro ſe & Communitatibus Civitatum & Burgorum predictorum diviſim ab ipſis haberent ad faciendum & conſentiendum hiis que tunc ibidem de communi Conſilio dicti Regni ipſius Domini Regis nunc (favente Domino) contigerint ordinari ſuper negotiis antedictis, ita quòd pro defectu poteſtatis hujuſmodi ſeu propter improvidam electionem Militum Civium aut Burgenſium predictorum dicta negotia infect. non remanerent quoviſmodo & Electionem illam in pleno Comitatu ipſius tunc Vicecomitis factam diſtinctè & apertè ſub ſigillo ſuo & ſigillis eorum qui Electionibus illis interforent eidem Domino Regi nunc in Cancellarium ſuum ad dictos diem & locum certificaret, indilatè remittens eidem Domino Regi alteram partem Indenturarum predictarum eidem brevi conſitarum una cum brevi illo; quod quidem breve poſtea & ante predictum ſextum diem Februarii in brevi predicto mentionatum, ſcilicet viceſimo nono die Decembris, anno duodecimo ſupradicto, apud Burgum de Ayleſbury in dicto Comitatu Bucks, cuidam Roberto Weeden Armigero adtunc Vicecomiti ejuſdem Comitatus Bucks deliberatum fuit in forma Juris exequendum; Virtute cujus quidem brevis predictus Robertus Weeden Vicecomes Comitatus Bucks predicti ut prefertur tunc & ibidem exiſtens poſtea & ante predictum ſextum diem Februarii ſcilicet triceſimo die Decembris Anno duodecimo ſupradicto apud Burgum de Ayleſbury predictum in dicto Comitatu Bucks fecit quoddam preceptum ſuum in ſcriptis ſub ſigillo ipſius Roberti Weeden Officii ſui Vicecomitis Comitatus Bucks predicti Conſtabulario Burgi de Ayleſbury predicti directum, recitantem diem & locum Parliamenti predicti tenendi, proinde eos requirens & eis in mandato dans quòd facta Proclamatione infra Burgum predictum de die & loco in eodem precepto recitatis cauſarent liberè & indifferenter eligi duos Burgenſes Burgi illius de diſcretioribus & magis ſufficientibus per ipſos qui hujuſmodi Proclamationibus interforent juxta formam Statuti in talibus cauſibus editam & proviſam & nomina dictorum Burgenſium ſic electorum licet preſentes forent vel abſentes inſeri in quibuſdam Indenturis inter dictum Vicecomitem & illos qui haberent intereſſe in hujuſmodi Electionibus, & quod eos venire faceret ad diem & locum in eodem precepto recitatos, ita quòd dicti Burgenſes haberent plenam & ſufficientem poteſtatem pro ſe & Communitate Burgi predicti ad faciendum & conſentiendum hiis quæ tunc ibidem de communi conſilio dicti Regni (favente Domino) contingerent ordinari ſuper negotiis antedictis ita quòd pro defectu hujuſmodi poteſtatis aut propter improvidam electionem Burgenſium predictorum dicta negotia infecta non remanerent & quòd electionem indilate eidem tunc Vicecomiti certificarent, mittentes eidem Vicecomiti alteram partem indenturarum predictarum dicto precepto annexarum ut idem Vicecomes eandem certificaret dicto Domino Regi in Cancellaria ſua ad diem & locum predictos; quod quidem preceptum poſtea & ante predictum ſextum diem Februarii ſcilicet eodem triceſimo die Decembris anno ſupradicto apud Burgum de Ayleſbury predictum in dicto Comitatu Bucks eiſdem Willielmo White Richardo Talboys Willielmo Bell & Richardo Heydon ad tunc & uſque ad & poſt retornatum ejuſdem brevis Conſtabulariis Burgi de Ayleſbury predicti exiſtentibus in forma Juris exequendum deliberatum fuit; quibus quidem Willielmo White Richardo Talboys Willielmo Bell & Richardo Heydon ratione Officii ſui predicti Conſtabulariorum Burgi predicti executio precepti illius de jure ad tunc & ibidem pertinuit, virtute cujus quidem precepti ac vigore brevis predicti Burgenſes Burgi predicti exiſtentes in ea parte debite premoniti poſtea & ante predictum ſextum diem Februarii ſcilicet ſexto die Januarii anno duodecimo ſupradicto apud Burgum de Ayleſbury predicti coram eiſdem Willielmo White Richardo Talboys Willielmo Bell & Richardo Heydon Conſtabulariis Burgi predicti aſſemblati fuerunt ad duos Burgenſes pro Burgo illo eligendos ſecundum exigentiam brevis & precepti predictorum ac durante aſſemblatione illa ad intentionem illam & antequam hujuſmodi duo Burgenſes virtute brevis & precepti predictorum electi fuerunt ſcilicet die & anno ultimis ſupradictis apud Burgum de Ayleſbury predictum in comitatu predicto idem Mattheus Aſhby ad tunc & ibidem exiſtens Burgens & Inhabitans Burgi predicti & Eleemoſinas ibidem aut alibi ad tunc aut antea non recipiens ſed debite qualificatus & intitulatus exiſtens ad ſuffragium ſuum ad eligendum duos Burgenſes pro Burgo predicto ſecundum exigentiam brevis & precepti predictorum dandum coram eiſdem Willielmo White Richardo Talboys Willielmo Bell & Richardo Heydon quatuor Conſtabulariis Burgi illius quibus tunc & ibidem debitè pertinuit ad ſuffragium ipſius Matthei Aſhby de & in premiſſis capiendum & allocandum parat. fuit & obtulit ſuffragium ſuum dare pro eligendo Thomam Lee Baronettum & Simonem Mayne Armigerum duos Burgenſes pro Parliamento illo virtute & ſecundum exigentiam brevis & precepti predictorum, ac ſuffragium ipſius Matthei Aſhby ad tunc & ibidem de jure debuit admitti, et predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon ſic Conſtabularii Burgi predicti tunc & ibidem exiſtentes ad tunc & ibidem requiſiti fuerunt per ipſum Mattheum Aſhby ad ſuffragium ipſius Matthei Aſhby predictum in premiſſis recipiendum & allocandum, iidem tamen Willielmus White Richardus

Richardus Talboys Willielmus Bell & Richardus Heydon ad tunc & ibidem ut prefertur Conſtabularii Burgi predicti exiſtentes premiſſorum non ignari ſed machinantes & fraudulenter & malitioſe intendentes eundem Mattheum Aſhby in hac parte damnificare & de privilegio ſuo de & in premiſſis predictis impedire & totaliter fruſtrare eundem Mattheum Aſhby ſuffragium ſuum in ea parte dare ad tunc & ibidem obſtruxerunt, & ad tunc & ibidem penitus recuſaverunt eundem Mattheum Aſhby ſuffragium ſuum ad eligendos duos Burgenſes pro Burgo illo ad Parliamentum predictum dare permittendum ac ſuffragium ipſius Matthei pro electione illa non receperunt neque allocaverunt ac duo Burgenſes de Burgo illo pro Parliamento predicto Mattheo Aſhby ſic ut prefertur excluſo ſine aliquo ſuffragio ipſius Matthei Aſhby ad tunc & ibidem virtute brevis & precepti predicti electi fuerunt in enervation. predicti privilegii ipſius Matthei Aſhby de & in premiſſis predictis. Unde idem Mattheus Aſhby dicit quod ipſe deterioratus eſt & damnum habet ad valentiam ducentarum Librarum & inde producit Sectam, &c.

Et modo ad hunc diem ſcilicet diem Veneris proxim. poſt Octabas ſancti Hilarii iſto eodem Termino uſque quem diem predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon habuerunt licentiam ad Billam predictam interloquendi & tunc ad reſpondendum, &c. coram Domino Rege apud Weſtmonaſterium veniunt tam predictus Mattheus Aſhby per Attornatum ſuum predictum quam predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon per Johannem Burnham Attornatum ſuum: Et iidem Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon defendunt vim & injuriam quando &c. Et dicunt quòd ipſi non ſunt inde culpabiles & de hoc ponunt ſe ſuper Patriam & predictus Mattheus Aſhby ſimiliter &c. Ideo ven' inde Juratores coram Domino Rege apud Weſtmonaſterium die Jovis proximè poſt Octabas Purificationis beate Marie Virginis & qui nec &c. ad recognitionem &c. quia tam &c. idem dies datus eſt partibus predictis ibidem &c.

Poſtea continuato inde proceſſu inter partes predictas de placito predicto per Juratum Patrie inde inter eos in reſpectu coram Domino Rege apud Weſtm. uſq; diem Mercurij proximò poſt quindenam Paſche extunc proximam ſequentem niſi Juſticiarii Domini Regis ad Aſſiſas in Comitatu predicto capiendas aſſignati prius die Lune nono die Martii apud Ayleſbury in Comitatu predicto per formam Statuti, &c. venerint pro defectu Juratorum, &c. ante quem diem dictus Dominus Willielmus Tertius nuper Rex Anglie &c. diem ſuum clauſit extremum ac etiam ante eundem diem loquela predicta adjournata fuit per breve Domine Anne nunc Regine Anglie &c. de communi adjournamento coram eadem Domina Regina apud Weſtmonaſterium uſq; a die Paſche in tres ſeptimanas ad quas quidem tres ſeptimanas Paſche coram eadem Domina Regina apud Weſtmonaſterium venit predictus Mattheus Aſhby per Attornatum ſuum predictum & prefati Juſticiarii coram quibus, &c. miſerunt hic Recordum ſuum coram eis hic in hec verba, ſcilicet, Poſtea die & loco infra contentis coram Edwardo Ward Milite Capitali Barone Scaccarij Domine Anne nunc Regine Anglie, &c. & nuper Capitali Barone Scaccarii Domini Willielmi Tertij nuper Regis Anglie & Thoma Knight Armigero hac vice aſſociato eidem Edwardo Ward, & Thoma Bury Milite uno Barone Scaccarii dicte Domine Regine nunc & nuper uno Barone Scaccarii dicti nuper Regis Juſticiariis ipſius Domine Regine ad Aſſiſas in Comitatu Bucks capiendas aſſignatis per formam Statuti, &c. preſente prefato Thoma Bury non expectato virtute brevis de ſi non omnes, &c. venerunt tam infra nominatus Mattheus Aſhby quam infra ſcripti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon per Attornatos ſuos infra contentos & Juratores Jure' unde infra fit mentio exacti ſimiliter venerunt qui ad veritatem de infra contentis dicend. electi triati & jurati dicunt ſuper Sacramentum ſuum quòd predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon ſunt culpabiles de premiſſis in narratione infraſcriptis interius eis impoſitis modo & forma prout predictus Mattheus interius verſus eos queritur. Et aſſidunt damna ipſius Matthei occaſione infra contenta ultra miſas & cuſtagia ſua per ipſum circa Sectam ſuam in hac parte appoſita ad quinque libras & pro Miſis & Cuſtagiis illis ad quadraginta ſolidos; ſed quia curia dicte Domine Regine nunc hic de Judicio ſuo de & ſuper premiſſis reddendo nondum adviſatur, dies inde datus eſt prefato Mattheo Aſhby coram Domina Regina apud Weſtmonaſterium uſq; diem Veneris prox' poſt craſtinum Sancte Trinitatis de Judicio ſuo inde audiendo eo quòd curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Weſtmonaſterium venit predictus Mattheus Aſhby per Attornatum ſuum predictum; ſed quia curia dicte Domine Regine nunc hic de Judicio ſuo de & ſuper premiſſis reddendo nondum adviſatur dies inde datus eſt prefato Mattheo Aſhby coram Domina Regina apud Weſtmonaſterium uſq; diem Veneris proximum poſt tres ſeptimanas Sancti Michaelis de judicio ſuo inde audiendo eo quòd curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Weſtmonaſterium venit predictus Mattheus Aſhby per Attornatum ſuum predictum, ſed quia curia dicte Domine Regine nunc hic de Judicio ſuo de & ſuper premiſſis reddendo nondum adviſatur, dies inde datus eſt prefato Mattheo Aſhby coram Domina Regina apud Weſtmonaſterium uſq; diem Sabbati proximò poſt Octabas Sancti Hilarii de Judicio ſuo inde audiendo, eo quòd curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Weſtmonaſterium venit predictus Mattheus Aſhby per Attornatum ſuum predictum, ſed quia curia dicte Domine Regine nunc hic de Judicio ſuo de & ſuper premiſſis reddendo nondum adviſatur, dies inde datus eſt prefato Mattheo Aſhby coram Domina Regina apud Weſtmonaſterium uſq; diem Mercurii proximum poſt quindenam Paſche de Judicio ſuo inde audiendo, eo quòd curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Weſtmonaſterium venit predictus Mattheus Aſhby per Attornatum ſuum predictum, ſed quia curia dicte Domine Regine nunc hic de judicio ſuo de & ſuper premiſſis reddendo nondum adviſatur, dies inde datus eſt prefato Mattheo Aſhby coram Domina Regina apud Weſtmonaſterium uſq; diem Veneris proximum poſt craſtinum Sancte Trinitatis de judicio ſuo inde audiendo, eo quòd curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Weſtmonaſterium venit predictus Mattheus Aſhby per Attornatum ſuum predictum, ſed quia curia dicte Domine Regine nunc hic de judicio ſuo de & ſuper premiſſis reddendo nondum adv ſatur, dies inde datus eſt prefato Mattheo Aſhby coram Domina Regina apud Weſtmonaſterium uſq; diem Sabbati proximè poſt tres ſeptimanas ſancti Michaelis de judicio ſuo inde audiendo, eo quod curia dicte Domine Regine nunc hic inde nondum, &c. Ad quem diem coram Domina Regina apud Weſtmonaſterium venit predictus Mattheus Aſhby per Attornatum ſuum predictum ſuper quo viſis & per curiam dicte Domine Regine nunc hic plenius intellectis omnibus & ſingulis premiſſis maturaq; deliberatione inde habita conſideratum eſt quòd predictus Mattheus Aſhby nil capiat per Billam ſuam predictam ſed pro falſo clamore ſuo ſit inde in miſericordia, &c. Et predicti Willielmus White Richardus Talboys Willielmus Bell & Richardus Heydon eant inde ſine die, &c.

Mr. Speaker, (Mr. *Harley*, afterwards Earl of *Oxford*) after the Reports were over, told the Houſe, That he thought it to be his Duty to put them in mind of the great Conſequence and Importance of this Matter, and that it behoved them to take very great Caution in their Proceedings, not only that the Grounds and Foundation be good, but alſo that the Method and Manner of treating it be according to ancient Uſage and Cuſtom of Parliament: And to that End he deſires the Houſe would give him Leave to ſtate this Matter, as it appear'd to him, and according to what occurr'd upon the ſudden to his Memory, that the Houſe might take proper Methods upon this Occaſion.

Mr. *Speaker* then proceeded to give the Houſe an Account of the State of Elections by Cuſtom or Common Law, and that the great Alteration in Point of Elections was in the Beginning of *Hen.* IV's Time, ſince whoſe Reign the Returns for Parliament have been made by Indenture. That by the Statute of 7 *H.* IV. there is a Method preſcrib'd of Election and Return, and the Occaſion he took to be this: *H.* IV. came to the Succeſſion of the Crown by the Depoſition of *R.* II. when the Parliament was ſitting. That Parliament was continued to *H.* IV's Time: For tho' in the Rolls it was call'd a New Parliament, and Returns were made as by the Sheriffs of the Counties, and alſo by the Boroughs, as if it was a new Parliament; yet it was the ſame Parliament, for they were the ſame Men, and there were too few Days between one Parliament and the other, to have a new Election. But *Henry* IV. having made ſuch an extraordinary Step, he would not leave it as a Precedent to be found out. Afterwards, when Times were a little more ſettled, in his ſeventh Year, and that Practice was neceſſary to be condemn'd, it was provided, at the great Complaint of the Commons, that it ſhould be done by Indenture, that the ſame or like Deceit ſhould never be put upon the Kingdom afterwards, and one Part was to be kept below. This continued for about four Years, when there was another Complaint of the Proceedings of Sheriffs (he ſaid he need not mention the Regulation of forty Shillings a Year, and ſome other Things which are not directly to this Caſe); and upon that there was a Penalty put upon the Sheriffs of a hundred Pounds, which he took to be in the eleventh Year; and it was put under the Inquiry of Judges of Aſſize, and ſo it ſtood all that King's Reign 'till *H.* V. And then there was another Law made for Electors and Elected, that they ſhould be all reſident. Some of the Law Books give a pretty Conſtruction of it, that tho' there was ſuch a Law, yet the Cuſtom of Parliament was to be the Rule. But he ſaid he thought it to be a better Conſtruction, That it being then reckon'd a Service, and a hard Service, none but Reſidents in the Borough were compellable. Thus it continued till about *H.* VI's Time, and then if the Sheriffs had made a wrong Return, if indicted or proſecuted at the Aſſizes, there was to be immediate Execution for this Hundred Pounds, without any Traverſe. Upon this there was a Statute to allow the Sheriff a Traverſe for this Hundred Pounds, and tha the ſhould not be liable to it till he was legally convicted; ſo it ſtood till about a Year afterwards, that the Parliament thought it neceſſary to make another Act about 8 *H.* VI. and then there was great Complaint again of the ill Proceedings of Sheriffs: And the Law was enforced again, and it was declared who ſhould be the Electors; and the Sheriff was made liable to the Penalty of an Hundred Pounds, and Impriſonment without Bail or Mainprize, and it was inquirable by the Judges of Aſſize. Another Statute was made the 10 *H.* VI. which enforceth the Manner of Elections, ſo it ſtood. Then 23 *H.* VI. there are two Statutes, one relating to the Wages of Knights, Citizens and Burgeſſes, and how they ſhould be levied; another reciting the Statute of *H.* V. and *H.* VI. and it ſays, That there were not ſufficient Penalties on Sheriffs, who, beſides that ſometimes they ſent no Writs to Boroughs, made inſufficient Returns, *&c.* And the Mayors and Bailiffs were guilty of the ſame; and therefore over and above the firſt Penalty of a Hundred Pounds, they laid another Penalty of an Hundred Pounds more, which was to the Plaintiff, with Coſts of Suit; and this was to be tried before the Judges of Aſſize, and the Courts at *Weſtminſter*, and at the Seſſions; and the Action is to lie either for a Knight, or Burgeſs, or any other Perſon that would bring the ſame, but within a Time limited, three Months from the Commencement of the Parliament. Thus Elections ſtood in Point of Law, 'till the modern Alteration within every Body's Memory. And he hop'd whatever time Gentlemen took this Matter into Conſideration, they would do it as became the Houſe of Commons, and examine all Particulars, as well as the Judgments of Law, and they would do what became a Houſe of Commons, and that nobody would ſee the Dignity of the Houſe of Commons impair'd. And however Differences were between them in other Things, they would be unanimous in preſerving the Rights of the Commons, and of doing it in a right and juſtifiable Manner: And offer'd to their Conſideration, whether it would not be beſt to proceed in the old Method, by going into a grand Committee for the Courts of Juſtice to conſider this Matter, and that by taking this Courſe, they would walk in the Steps of their Predeceſſors, and avoid many Inconveniencies, which were eaſily to be foreſeen would happen, by taking another Courſe.

But it being moved and ſeconded, to conſider of the ſaid Reports in a Committee of the whole Houſe, the Queſtion was put, and carry'd, That the

the House on *Tuesday* then next following, would resolve itself into a Committee of the whole House, to consider of the said Reports.

Ordered, That the same Members do also search the Offices of the Court of Queen's-Bench, what Proceedings were there in the Case of *Barnardiston* and *Soame*, and for a Copy of the Record of the Judgment in that Case, and report the same to the House.

Lunæ 24 *Januarii*, 1703.

Mr. *Brewer* reported, That the Members appointed to search the Offices of the Court of Queen's-Bench, as to what Proceedings were there in the Case of *Barnardiston* and *Soame*, and for a Copy of the Judgment in that Case, had searched the same accordingly; and he presented to the House a Copy of the said Judgment, the Consideration whereof was referred to the Committee of the whole House, who were appointed to consider of the Report relating to the Case of *Ashby* and *White*.

Martis 25 *Januarii*, 1703.

This Day the House resolved into a Committee of the whole House to take into Consideration the Report of the Lords Journals touching their Lordships Proceedings on a Writ of Error in the Case between *Ashby* and *White*, & *al.* and also touching their Lordships Proceedings in the Matter mention'd in the Petition of Mr. *Bathurst*; in which last Case of Mr. *Bathurst*, as it was alledged, their Lordships had taken upon them an original Jurisdiction, in controuling an Order made by the Court of Exchequer for the filing of a Record that had been several Years lodged in Mr. *Granges*'s Chamber of the *Temple*. But the Committee in the first Place agreed to go on with the Business of *Ashby* and *White*; and the Debate of that Matter was carried on with great Order and Temper, and was to the Effect following.

Mr. *Freeman* in the Chair.

Mr. *Brewer*. Sir, we are now in a Committee of the whole House upon the Consideration of the Case of *Ashby* and *White*, which I take to be a Matter of the last Consequence to the Privileges of the House of Commons, which I think are dangerously invaded by the Lords Pretence of Judicature upon them. But as I don't doubt every Gentleman here thinks it his Duty to support and maintain the just Rights and Privileges of this House, as intrusted by those who sent us hither; so we shall do it in such a Manner as will consist with, and maintain a due Correspondence with the Lords. I shall open the true State of the Case, with the Judgment given upon it in *Westminster-Hall*, and some of the Reasons which, in my Opinion, support that Judgment; and then speak to the Reversal of it by the Lords, (which, with Submission, I take to be a new Attempt of their Lordships, to bring this, and all our Privileges before them in Judgment) which, I believe, neither this, nor any other House of Commons will endure, nor want Will or Power to relieve themselves against such an Usurpation.

The Plaintiff declares against the Defendants, That whereas on the 26th Day of *December*, in the 12th Year of King *William* the Third, a Writ issued to the Sheriff of *Bucks*, commanding him to cause to be elected Two Burgesses for *Aylesbury*; the Sheriff directed his Precept accordingly to the Constables, to whom it belong'd to execute that Precept; and the Burgesses being assembled, and the Plaintiff duly qualified to give his Vote, he offered to give it for Sir *Tho. Lee* and Mr. *Mayne*; but the Defendants falsly and maliciously intending to defeat him of that Privilege, did refuse to receive it, which he lays to his Damage, and Issue being joined, that Cause was tried at the Assizes, and a Verdict for the Plaintiff, and 5*l* Damages.

The Fact being thus tried, the Matter in Hand (that is to say, Whether this Action is maintainable by the Rules of Law, or not) was often argued by Counsel learned at the Bar, and afterwards considered by the Judges in the Queen's-Bench, and upon their mature Consideration, Judgment was given for the Defendants, that is, that the Plaintiff had no good Cause of Action.

Now I understand the chief Reason was, for that the Right of voting in such Cases hath ever been, and ought to be cognizable and determinable by the House of Commons, and not elsewhere: For by the Law and Usage of Parliament, the House of Commons have heard and determined the Right of their own Elections, and consequently and necessarily the Right of the Electors to vote: and for this Purpose, at the opening of all Parliaments a Committee of Elections is nominated of Members of our own, to hear and determine of such Right of Elections, to whom Petitions (after presented to the House) are referr'd; and if any Elector had been refus'd his Vote in the Country, he is, notwithstanding, allowed his Vote here, in case he had Right, and it shall avail the Candidate as much as if the Vote had been received below; and the Committee, after Judgment upon the Case, report to the House all the special Matter, and their Resolutions; where the whole Matter may be a-fresh debated, and the House agree, or disagree, with the Committee, as shall appear reasonable; so that this Determination and Method of Trial hath two Digestions, and more likely to be well founded than that of a common Jury, who we know are made by Under-Sheriffs, and often of Persons so corrupted or ignorant, that new Trials are often granted by the Judges. But it may be objected, that no single Petitioner will be received by the House: In Answer to this, I say he may; and I have known Petitions touching Elections preferred by a very few Persons, and by the same Reason may by one: I am sure we have no Order of the House against it; and if Gentlemen object that no single Petition of this Nature was ever received, if they'll shew me when it were offered, I will shew them when 'twas received; I believe they can't shew me 'twas ever refused. But I would ask, if they can shew me that such an Action as this was ever brought against the Officer, as in this Case. I'm sure they can't, and which, in our Law, is allowed a good Argument, that no Action lies; especially it being a Case which can't be presum'd, but may happen very often, almost in every Election: And, I believe, there never was a new Parliament called, but frequent Occasions might have been taken for such an Action, and better founded than this of the Plaintiff's, who was a poor Hostler, and remov'd from that Parish by the Order of two Justices, as being likely to become chargeable. But it seems our Ancestors reposed a Confidence in their Representatives to have Right done them in such Cases: They sought not Relief from common Juries. And what is now done by this Attempt? Why, the Judges upon their Oaths say, that they have no Cognizance of the Cause; but notwithstanding, the Lords say they have Cognizance, and reverse that Judgment; and the Consequence of that is, the Lords will judge of this our undoubted Privilege, never, 'till now, drawn into Question; and by the same Reason and Law, the Lords may sit in Judgment upon all other our Privileges, and thereby we become depending upon them: which some without Doors, I find, are willing to submit to, for that they say, where one is deprived of his Right, he ought to have Damages, which the House of Commons can't give. I allow, where one is injured, he shall have Relief by our Law, in one Place or other, but we have not one Shop to cure all Distempers. The Queen's-Bench relieves chiefly in Matters Criminal; the Common-Pleas, in Civil Pleas between Party and Party; the Exchequer, in Matters of Revenue; Chancery, in Cases of Fraud; and in the Case in Question, Relief may be had (as said before) in the House of Commons by Law and Usage of Parliament, which all Lawyers know is a very considerable, known, and approved Part of the Laws of *England*. And tho' no Damages are usually given here, yet the Officer, for Misbehaviour, and arbitrarily refusing Votes who had Right, may be, and has been punished by the Power and Authority of the House, and even at Common Law, as when an Alderman is refused by the Mayor, or other Person who ought to admit him, the Remedy is by *Mandamus*, which tho' it is chargeable to the Person injured, yet I don't know any Damages are given him, otherwise than that the Party injured is admitted, which is a Relief, the Alderman having what he complained for: And so the Elector, his Vote is allowed as good as if the Constable had took it. And by the way, give me Leave to observe how small a Relief the new-devised Remedy by Damages is: I dare affirm and demonstrate, that the Plaintiff in the Case in question is above 100*l.* out of Pocket more than the Costs and Damages recovered, which I take to be *infelix victoria*. But if Gentlemen say, the poor Hostler could not expend so much, I believe so too; but if at the expence of any great Man, I think it is less justifiable, to make a Tool of that poor Fellow, perhaps in order to enlarge a Jurisdiction.

I must confess I take the Case of the Elected, to be much stronger than the Case of the Electors; and yet, in such Cases, Relief, at Common Law, was always denied, as in the Case of Sir *Samuel Barnardiston* and *Soame*, there the Sheriff made a double Return; and in the Case of Mr. *Onslow* *, a false Return; and the Persons injured by those Returns were put to very great Charges, and kept long from their Seats in the House, and yet at Common Law could never obtain a Relief. The Judges were of Opinion (as they now are in the Case of the Elector), that it was a Matter of Parliamentary Cognizance, of which they were not competent Judges. And should we now admit this Matter to be determined by the Courts below, what great Confusion and Inconvenience would follow? I presume no

* The CASE of DENZIL ONSLOW, Esq. was tried at the Assizes holden for *Surry* on *Wednesday* the 20th Day of *July*, in the Year of our Lord 1681, at *Kingston* upon *Thames*, before the Lord Chief-Justice of *England*, Sir *Francis Pemberton*.

The DECLARATION.

Denzil Onslow, Esq. had brought his Action on his Case in the Court of Common Pleas, against *William Rapley*, late Bailiff of the Borough of *Haselmere*; thereby setting forth, That *Haselmere* was an ancient Borough that used to send Burgesses to Parliament: That a Writ issued to the Sheriff of *Surry*, to cause Knights and Burgesses to be chosen for the Parliament to be held the 17th Day of *October*, *Anno* 31 *Caroli Regis*. The Sheriff made a Precept to the Borough of *Haselmere*, to chuse Burgesses. That *August* 31, *Anno* 31 *Caroli secundi*, the Plaintiff was duly elected one of the Burgesses, and returned by Indenture with Sir *William Moore*. That the Defendant, intending to deprive the Plaintiff of the Honour and Benefit of his Election, did by another Indenture return Sir *William Moore*, Bart. and *James Gresham*, Esq. as duly elected, whereas the said *Gresham* was not duly elected; whereby the Plaintiff was hinder'd from sitting in Parliament, and put to great Charge to assert his Right, to his Damage of 200*l.*

After Not Guilty pleaded, upon Evidence given on both Sides at the Trial, the Case appear'd to be thus.

The CASE and EVIDENCE.

At the Election in this Borough for the last Parliament at *Westminster*, there were Four Competitors, *viz.* Sir *William Moore*, the Plaintiff, Mr. *Dorrington*, and Mr. *Gresham*. The Electors meeting and voting, the Poll was demanded, granted, and taken: The Defendant took Time to peruse and consider the Poll, until the Afternoon; and having consider'd of it, came again to the Place of Election, and declared the Plaintiff and Sir *William Moore* had the Majority of the ancient and lawful Burgesses, and proclaimed them Two to be duly elected, and seal'd an Indenture thereof accordingly; and Mr. *Gresham* being then present, opposed not the same, but desired that Sir *William Moore* (with regard to his Title and Quality) might be first named in the Indenture, although (as was then admitted) Mr. *Onslow* had the Majority of him; which was done accordingly, Mr. *Onslow* readily and generously consenting to the doing thereof.

That about a Week or a Fortnight after, the Bailiff was prevail'd with to seal and return another Indenture, whereby Sir *William Moore* and Mr. *Gresham* were return'd as elected. Whereupon, Mr. *Onslow*'s Right to sit was controverted, and he suspended from sitting; and was put to his Petition to the House of Commons, who, upon hearing of the whole Matter, and Consideration had of the indirect Dealing of the Defendant and others, declared Mr. *Onslow* duly elected, and committed the Defendant. And Mr. *Onslow* sate in the last Parliament at *Westminster* for that Borough, and that Mr. *Onslow* had been at great Charges to clear his Election.

First, The Defendant's Counsel insisted on the Statute of 1 *H.* V. *cap.* 1. That a Person elected must be free, resiant, and dwelling within the Borough. To which it was answer'd, and resolv'd by the Court, That little or no Regard was to be had to that ancient Statute, forasmuch as the common Practice of the Kingdom had been ever since to the contrary; and it was the way to fill the Parliament-House with Men below the Employment: And the Ojection was disallow'd.

Secondly, It was agreed unto by the Parties and their Counsel on both Sides, That the Right of Choice of Burgesses for this Borough to Parliament, lay in the Burgage Freeholders, resiant, and inhabiting within the Borough, and none others.

Then the Plaintiff's Counsel insisted and proved, That there voted for him Thirteen, having good and unquestionable Votes; unto one whereof the Defendant's Counsel excepted, for that he before the election had mortgaged his Estate: Which the Party himself, present in Court, denied upon Oath; and the Court was of Opinion, it had not been a good Objection, if true, so long as the Mortgager continued the Possession, and had the Benefit of Redemption in him.

The Defendant's Counsel said, There voted for Mr. *Gresham* Fourteen, having good Votes; which if so, would have made a Majority: but the Plaintiff's Counsel excepted to Six of the Fourteen, as being no good Electors, for that one of them lived not within the Borough; which was proved by ancient Reputation and Perambulation, That the House where he lived was left without the Bounds. As to the other Five, the Objection was, they were no real Burgage Tenants; and that if any Conveyances had been made to them of Burgage Lands, they were lately made, and fraudulently contrived, to make Votes against an Election: And because the Defendant's Counsel could not deny but these Conveyances were lately made, the Court put the Defendant to produce and prove them, which was done; and upon reading of them, it appear'd Two of the Five were made after the Test of the Parliament-Writ, and Three of them, in order to carry on Sir *Philip Floyd*'s Election in the Borough about Five Years since.

Two

nobody will pretend to exclude the Jurisdiction of the House of Commons in this Case; and yet if they judge one way, and the Courts below another, and neither have Power to supersede or reverse the Determination of the other, under what Uncertainty will the Officers and all Parties concerned lie? Whereas, in other Cases, where one Court errs, a superior Court reverses; but here both Adjudications shall stand together, though inconsistent the one with the other.

But 'tis said in this Case the Action lies, because the Defendant refused the Plaintiff's Vote *malitiose & falso*: I take those to become Words of Course, and no Evidence of that is given to the Jury.

Sir, to conclude, the House lately passed a Resolution, That no Lords should intermeddle at any of our Elections: But if this is allowed as Law, they may at the last judge and make (for aught I know) all our Elections. But for my Part, I am for continuing the Possession of this and all other just Privileges, as derived down to us from our Predecessors, who ever enjoyed and exercised them as now we should; and I hope before we rise we shall think of some Remedies, and not lie wholly under the Power or Mercy of the Lords.

Sir *Tho. Powis.* Mr. *Freeman*, I believe I should hardly have rose up in this Matter, but that I think it more particularly my Duty to speak to this Thing, if it were possible, than any other; for in truth I have had a more particular Opportunity of knowing the Nature of this Case, and the Proceedings in it, and what the Consequences of it will be, than many others have had.

I must acquaint you I was of Counsel in this Cause in the House of Peers upon the Writ of Error with *White*, and the other Constables that were prosecuted in this Action, and did to my Power defend what I took to be the Rights and Privileges of this House.

I would stand right in the Opinion of every Body; for what I did there for my Client in the Course of my Profession, I don't think myself obliged to maintain here; for then it was my Duty to do my best for him as his Counsel, but now he hath done with me, and I have done with him in this Place.

It hath been to the great Honour of some Judges in *Westminster-Hall*, who have argued in Cases below at the Bar, and have been brought on the Bench before the Cause hath been determined, That they have argued at the Bar one Way, and when upon the Bench have given Judgment another Way against their very Clients, and thereby done their Duty in both Places.

Now, when I have said this, I hope I do stand fair and clear, that I now speak as a Member of the House of Commons.

You are upon a Point which I wish had never happened, for there is nothing I enter upon with greater Reluctancy than what looks like a Dispute with the other House; for no Man pays a greater Honour to the House of Peers, and to every Peer there, than I do; however, as I am intrusted, I shall endeavour to maintain the Rights of this House. And I do say, if the Peers of *England* can determine all our Properties at Law upon Writs of Error, and all our Rights in Equity upon Appeals; and if they can determine all our Elections in consequence of this Action, (as I am of Opinion they may, if this Action prevails) they have a greater Power than ever that House had in the Days of their Noble Ancestors, when they were in their greatest Grandeur.

I will shew you what will be the ill Consequences, and I think it very fit for you to take this Matter into Consideration, if there be any way to come at it. *First*, I can't deny, but, generally speaking, a Man has Right to bring his Action at Law; but then, I hope, though a Man hath a Right to bring an Action, yet he can't bring it in Detriment to any other Man's Privilege; for if a Member of this House be sued in Time of Privilege, though a Person have a Right to such Action, yet he can't prosecute it in Breach of the Privilege of such Person, much less can a Man prosecute an Action in Breach of the Privilege of this House. And suppose this should come before the Lords in Question by Writ of Error, and they should be in possession of the Cause; sure every Determination of the Lords upon a Writ of Error is not without more ado to be conclusive to the Commons in their Rights and Privileges, so as that they may not take an Alarm, and be concerned, if all their Privileges are about to be taken from them. Suppose any Member of this House (as I think by the Privileges of this House he may) should in this House have just Occasion to take Notice of some great Misdemeanor in any great Officer of the Crown, and should assert Matters highly intrenching on the Honour of a Peer of *England*; and suppose, when the Parliament was up, the Peer should bring his Action of *Scandalum Magnatum* against the Member at Law for Words that he had spoken here, and lay them as spoken elsewhere, (for so in a transitory Action he may) and he should justify that they were spoken in the House of Commons, where, by the Privileges of the House, Freedom of Speech is allowed; and suppose Judgment in that Case (as in this it was) should be given against the Plaintiff, and afterwards this by a Writ of Error should be brought before the Peers, and they should reverse this Judgment, and give Judgment for the Plaintiff; Can any thing be more destructive to the Constitution of Parliament, if such a Case as this should happen? And must the Commons in such Case sit down by it?

Suppose any Man should presume to arrest any Member as he was going into the House of Commons, nay, the Speaker himself, and afterwards he is committed by Order of the House, and the Person committed should bring his Action for taking him into Custody, and the Serjeant who took him into Custody should plead this Matter, and the Judges give Judgment for him as they did for the Defendants in this Case, and by Writ of Error, it being brought into the House of Peers, they should reverse this Judgment, and give the Plaintiff his Damages; Will any one say, we could not take Notice of this? Would it not destroy all our Rights and Privileges?

So no doubt in this Cafe, though they have gone by way of Action at Law, and Judgment in *Westminster-Hall*, and Writ of Error in the House of Peers, it cannot be said, but if it concerns our Rights, we may take Notice of it. In the Case of Sir *John Elliot*, &c. (Vol. VII. p. 242.) the Commons declared the Judgment, 5 *Car.* I. illegal, and against the Privileges of Parliament.

It is my poor Opinion 'tis our Right (and I think nobody can doubt it), for we are in Possession of it, to determine our own Elections; and I would be glad to be acquainted when first we began to hear and determine our own Elections; I believe nobody will say with Certainty when we did not.

I know we have a turbulent Author, who generally affected to be in the Wrong, and though a Member of this House, made it his Business to write against their Privileges, and was always hunting among the Records of the *Tower*, from whence he brought away a great deal of Dirt with him, and yet could never pretend or produce more than two Instances, where the Commons resorted to any other Place for the settling the Right of their Elections: The Man I mean is Mr. *Prynne*; he takes occasion to do it from what is said by my Lord-Chief-Justice *Coke*, (who, with your Favour, I must take Notice of so far, as to say he was not only a very great Man in our Profession, but had been Speaker of the House of Commons in his Time) and he, in his 1 *Inst. fol.* 116. and 4 *Inst.* 1. *cap. fol.* 14, 15 and 23. asserts, That the Law of Parliament is as much Part of the Law of the Kingdom, as any other, and indeed the highest: He calls it *Lex & Consuetudo Parliamenti*, and says, This is a Law that each House hath Possession of, and judgeth by, and each House is a House of Judicature; and he puts upon this a great many Instances, and some of them may seem strange to those who have run upon the Commons of late. He tells you of a Case, 8 *Eliz.* at that Time *Onslow* was Speaker, (and it is in *fol.* 19. of the Book of the House of Commons of that Year) one *Long* was returned a Member for *Westbury*; and it being complained of that he came into the House by undue Practices, it was enquired into by the House of Commons, and found that he had given four Pounds to the Mayor of *Westbury*; and they having examined and tryed this Matter, they did not only expel *Long*, but they fined and imprisoned the Mayor of *Westbury*, *secundum Legem & Consuetudinem Parliamenti*. Mr. *Prynne*, the Author I mentioned, supposeth there was a Time when the Commons used to apply to the King in case Wrong was done in the Matter of their Elections; and in his Comment on the 4 *Instit.* 31. goes back to 12 *E.* II. There the King was pleased by Commission to appoint several Persons to hear the Matter of an Election. He pretends to another Instance, and that is in *Henry* the VIth's Time, in the Case of *Huntington*; and there was a Petition to, and a Commis-

Two of them were Conveyances by one *Vallor*, who had a Garden of about thirty Rods, and conveyed to each of his two Sons a Piece of it, containing about ten Rods, of which they had made Jointures to their Wives, each Share being worth at best 2*s. per Annum.* Another of the Five was made by a Father who had a Close containing two Acres, and made a Conveyance to his Son of about a Quarter of an Acre, which always after lay undivided, and was constantly enjoyed by the Father. Another Conveyance was made by a Son-in-law to his Father-in-law, of a Cart-house. The last was a Conveyance to one *Jackson*, of a little Tenement; but it was proved that collateral Security was given to re-convey, and that the Grantor had repaired it. As to all Five, there appeared several Badges of Fraud, as a continued Possession in the Grantors, &c. and the several Confessions of the Purpose and Intent of making them for the Elections.

The Court censured such Proceedings as evil and unlawful: Mr. *W.* (Recorder of *G.*) one of the Defendant's Counsel, stood up to justify these Proceedings, and said it was Part of the Constitution of our Government to do so. At which the Court seemed very angry, and wondered that any one, especially a Man of the Gown, should say so; and said, Do you think our Government hath no better Constitution? With which the Gentleman not being satisfied, he was told by the Court, he deserved to be taken Notice of for saying so, and that he seemed to have advised the Thing done.

To conclude the Evidence, the Plaintiff's Counsel delivered into Court Ten or Twelve several Conveyances that were proved by the Party that wrote them, to have been made by Mr. G's Order, to make so many Votes at a former Election, wherein Mr. *Gresham* was concerned; and the Election being over, they were cancelled and delivered up, concerning which, Mr. *Gresham* endeavoured to say something by way of Excuse, but was told by the Court, it was too bad to be excused; and it was well an Act of general Pardon had passed since this was done, else he should have answered it in another Place. During the whole Time of the Trial, the same was managed with great Patience and Circumspection; for so soon as the Cause was opened by the Plaintiff's Counsel, the Court perceiving the Nature of it, commanded Silence and Attention in the Jury: the Court declaring it was of great Weight, as great as any that ever came there to be tried. And the Evidence being fully given on both Sides, the Court by way of Direction told the Jury, that the Plaintiff need not, as this Case is, prove any express Malice in the Defendant; for it shall be intended when a Man shall do such an evil Thing as this is, contrary to his own Knowledge and Declaration made upon the Election, and afterwards also (for it was proved against him, by one or two Witnesses, that a little Time before this Trial, he did confess Mr. *Onslow* was duly elected, and that he had told Mr. *Gresham* what would come of it). And the Court further told the Jury, that this was a Cause of Moment, and deserved more than ordinary Consideration; and the making Votes by such Means was a very evil and unlawful Thing, and tending to the Destruction of the Government, and debauching of Parliaments: And although some of the Conveyances were made some Time before his Election, to serve a Turn at a former Choice; yet that they were fraudulent, and void in their Creation, and ought not to be made use of at any Time against any other Person; and that it was senseless to think such Practices were Part of the Constitution of our Government, or to imagine that Persons whom we entrust with our Lives and Fortunes ought to be made and chosen by such evil Devices; and that such Practices deserve to be severely punished, and directed the Jury to give signal Damages: Whereupon the Jury withdrew, and after a short Stay gave a Verdict for the Plaintiff, and 50*l.* Damages.

And the Court in the Course of Evidence having observed one *Billinghurst* to be much concerned in the Proof and Management of their fraudulent Deeds, conceived him to be privy to much of the Practice thereabouts, and commanded him to stay in Court until the Jury had given in their Verdict; which when they had done, the Court required him to find Sureties to appear in the Court of King's-Bench next *Michaelmas* Term, to answer to an Information touching the said Misdemeanor; and in the mean Time to be of good Behaviour, which accordingly he did do; and Sir *William Moore* and Sir *George Woodruff* (whom he had served in the last Election at *Haselmere*) were his Sureties. And the Court required the Plaintiff, Mr. *Onslow*, to see that an Information be preferred; which he promised to do: And the Court declared it was a very great Offence, and should be severely punished.

I shall give a few Instances of what the House of Commons have done in former Ages to punish and prevent Evils about Elections.

1. *Anno* 20 *Jacobi*, Doctor *Harris*, Minister of *Blechingly* in *Surry*, for misbehaving himself, by preaching, and otherwise, about Election of Members of Parliament, upon Complaint, was called to the Bar of the House of Commons, and there, as a Delinquent, on his Knees, had Judgment to confess his Fault there, and in the County, in the Pulpit of his Parish Church, on *Sunday* before the Sermon.

2. *Anno* 21 *Jacobi*, *Ingrey*, Under-Sheriff of *Cambridgeshire*, for refusing the Poll, upon the Promise of Sir *Thomas Steward* to defend him therein, kneeling at the Bar, received his Judgment, to stand committed to the Serjeant at Arms, and to make Submission at the Bar, and acknowledge his Offence there, and to make a farther Submission openly at the Quarter Sessions, and there also to acknowledge his Fault.

3. *Anno* 20 *Jacobi*, the Mayor of *Arundel*, for misbehaving himself in an Election, by putting the Town to a great deal of Charge, not giving a due and general Warning, but packing a Number of Electors, was sent for by Warrant, and after ordered to pay all the Charge; and the House appointed certain Persons to adjust the Charges.

4. And lastly, 3 *Car.* I. Sir *William Wrey*, and others, Deputy-Lieutenants of *Cornwal*, for assuming to themselves a Power to make whom they pleased Knights, and defaming those Gentlemen that then stood to be chosen, sending up and down the Country Letters for the Trained Bands to appear at the Day of the Election, and menacing the Country under the title of his Majesty's Pleasure; had Judgment given upon them, to be committed to the *Tower*. 2. To make a Recognition of their Offence at the Bar of the House, upon their Knees; which was done. 3. To make a Recognition and Submission at the Assizes in *Cornwal*, in a Form drawn by a Committee. See this Case in a Folio Pamphlet, printed 1681.

sion from the King in like Manner. The latest of these Instances is above two Hundred Years ago, and neither of them make any thing for a Power in the Lords to determine the Elections of the Commons; but on the contrary, rather for a Power to be delegated by the King, and the Instances are but Two.

Now, I say, Sir, we are, and have been in Possession of this Right for a very great Length of Time, and have it confirmed to us by Act of Parliament; for the late Act of 7 and 8 of King *William*, hath in effect declared, that the Determination of the Right of the Electors is in the House of Commons; for it says, That the Sheriffs and Officers of all Sorts, shall follow the last Determination of the House of Commons, as their Rule and Guide in such Cases. And surely nothing is more absurd than to say, that this House shall examine, try, and determine who are elected; and yet *Westminster-Hall*, and the Lords shall examine and determine the Right of the Electors: How can any one examine the Election, but the first Step he takes must be to consider and determine who are the Electors? And the determining the one, is determining the other.

I would trouble you a little with the Reasons they give why this Action should lie. It hath been said, and I think 'tis true, for the Honour of *England*, and I believe it hardly can be found to fail, That where a Man hath a Right, and a Wrong done him, he is somewhere to have a Remedy; but now let us see the Application of this Rule. Are they not by the same Law that settles the Right, and declares the Wrong, to enquire where the Remedy is to be had? For though you have a Remedy, you mistake that which is the proper Remedy; and the same Law that settles the Right, and declares the Wrong, gives the Remedy; you must therefore go to the Place where the Law directs your Remedy, not where yourself would desire the Remedy. Therefore, says my Lord *Coke*, in his Preface to his 4 *Instit.* and likewise *fol.* 14 and 15. We have several Jurisdictions, some Ecclesiastical, some Temporal, *&c.* some governed by one Law, and some by another; and all must have their Rules and Bounds, which must be observed. If your Right be Ecclesiastical, as for Instance, before the Statute of Tithes, could you in *Westminster-Hall* have brought your Action? Or if Issue had been joined in such an Action, and the Parties had gone to Trial, will any Body say, but that the Judges must have arrested Judgment, and said that 'twas out of their Jurisdiction? If a Lord of a Manor should refuse to admit a Man, to whom a Surrender is made of a Copyhold Estate, the Lord has done him Wrong, and Damage too; but yet he cannot bring his Action at Law for it, for it is an equitable Right, and he must go to a Court of Equity for his Remedy; and so I could put a thousand Instances, but I will not spend your Time. So that I say, 'tis not enough to say you have a Right, and must have a Remedy, and therefore you may bring your Action at the Common Law; but you must seek it in a proper Place, though perhaps Costs and Damages, and a Trial by a Jury, may be more desirable by the Party.

Now, in this Case, I would know, Whether this is not a Matter of Parliamentary Jurisdiction, and also a Parliamentary Right? Is any Thing more plain? He that hath a Right to vote, hath a Right to send a Person to represent him, and sit in Parliament; therefore 'tis a Parliamentary Right: Where then must be your Remedy? In the House of Commons, where you have a Right to send a Person to sit and represent you; there you may complain, I was denied my Vote, or misused upon the Election. This, by the Law of Parliament, shall be examined here, and for this Purpose you constantly appoint a Standing Committee of Elections.

Indeed I cannot but wonder at the bringing of this new-invented Action; for if there be any thing certain in the Common Law, 'tis this, That where you claim a Right to any thing, it must be founded upon common Usage in that Case, or in some Case that carries the same Reason, and is just like it; for the Common Law, generally speaking, is nothing else but Common Usage. Now let us see for the Usage in this Case, and whether there has been any thing like this Action before. Say they, How do you know but such Actions have been brought before? I do not see that there can be a stronger Negative Proof in any other Case than in this; for we have had Parliaments, as appears by our Statutes in Print, for five hundred Years, and we have had Parliaments in every Reign since, and in several Reigns a great many Parliaments: And let us consider, whether this Case would not have happened frequently in five hundred Years, in so many Elections in Counties, Boroughs, and Cities, where there are such infinite Numbers of Electors: And therefore this Case must frequently have happened if such an Action lay at Law. If it be asked, How do I know that such an Action hath not been brought before? I answer, 'Tis wonderfully plain there never was such an Action brought before; for as we have our Acts of Parliament in Print, so we have faithful Reports of all our Law-Cases, which we call the Year-Books, and which are Memorials of all Cases so long back as from *E.* II's Time, that is, 400 Years, followed by a Series of Reports 'till this Time, and are now grown so numerous, that they become a Burthen. And I will desire any Gentleman of the Law here, or in *England*, to shew me the Footsteps of any such Action as this, or of this Kind till now, ever brought before. We have always said, *Our Forefathers were wiser Men, and greater Lawyers than we are*; and so they were: But such an Action as this never entered their Thoughts.

But it may be said, How does it appear that there was Occasion for these kind of Actions formerly, for Men heretofore were unwilling to serve in Parliament, they were hired, and almost pressed to it, and it was hard to get Men to come up? I answer, It was so far otherwise for many Years past, that so early as *H.* IV.'s Time, there were great Contests about Elections, and the Sheriffs in those Days were apt to do wrong; as appears by 7 *H.* IV. *cap.* 15. And therefore 11 *H.* IV. *cap.* 1. there was opposed One Hundred Pounds Penalty to the King, on the Sheriff that did not do his Duty, according as the Statute does direct: So that it does appear there was Occasion for these Actions, if they had lain by Law; and yet you will find that never, till 23 *H.* VI. did it enter into the Thoughts of any Man, that an Action at Common Law could be brought for an Injury in an Election; and therefore that Act recites, that there was not before that Time a sufficient Remedy for the Party grieved; and therefore gives a Hundred Pounds to the Party, and Costs if a Knight, and Forty Pounds if a Citizen or Burgess, and that by a Law made on purpose to help the Party to an Action where there was no such Remedy before. Thus it rested till the famous Case between *Nevill* and *Strode*, in 2 *Siderfin*, *fol.* 168. (in that Times they sent five Knights of the Shire out of *Berkshire*) Mr. *Nevill* brought his Action against *Strode* the Sheriff; and he alledged, that he being One of the Five chosen for that County, *Strode* had maliciously and falsly refused to return him, *&c.* and the Jury gave him Fifteen Hundred Pounds Damages. This Action made a great Noise, and the Judges looked upon it as a great Novelty, and thought fit to consult the Parliament in it *; (in former Days in Matters relating to the Parliament, they used to consult the Parliament) and the Judges heretofore when they were asked their Opinion in difficult Matters relating to the Parliament, or Law of Parliament, would say, This was above us, and therefore to be decided by Parliament. And this Case being referred to the Parliament, they looked upon it as so extraordinary an Attempt, that though Mr. *Nevill* had a Verdict for fifteen hundred Pounds Damages, yet he never got a Farthing of the Money, or any Benefit by the Verdict: *Sed ibi dormivit.*

After this, came the great Cause that hath been mentioned of *Soame* and *Barnardiston*; and methinks this deserves very much our Consideration, and how far the Determination of the House of Peers ought to be a Rule in this very Case. That Cause set forth with great Prospect of Success: Sir *Samuel Barnardiston* in that Case, did not slight the Determination of the House of Commons, but first petitioned this House as the proper Place to determine his Right, and had it decided for him, That he was the Person duly elected, and the other Return was taken off the File; and then he brought his Action at Common Law, and set forth this whole Matter, and that the Sheriff falsly and maliciously returned another with him, whereby he was kept out of his Right, *&c.* a long Time, and put to very great Expence and Costs. This came to be tried at the Bar of the *King's-Bench*, and there was a Verdict given for Sir *Samuel Barnardiston* for eight hundred Pounds. This was looked upon as a great Case, and my Lord Chief-Justice *Hale* bid all Persons about him take Notice, that they did not determine the Right of the Election, for the Judgment in that Case belonged to the Parliament; but said, since the House of Commons had determined the Right, he thought they might follow their Judgment to repair him in Damages, and so gave Judgment for the Damages the Jury had given the Plaintiff.

This Case was looked upon so improper for the Common Law, that upon a Writ of Error brought in the Exchequer-Chamber, that Judgment was reversed, because the Common Law could not any way intermeddle with Elections to Parliament, further than was directed by Acts of Parliament. It might have been said, and I know 'twas said, that the Reversal of this Judgment was by an extraordinary high Hand: And therefore, upon the Revolution, in the very beginning of King *William*'s Reign, Sir *Samuel Barnardiston* brought a Writ of Error in Parliament, complaining, that in the Exchequer-Chamber they had reversed this Judgment unjustly, and went upon these Reasons, as may be observed from the Journal of the House of Lords, which were the Reasons of some very few protesting Lords.

First, Because it was a denying Sir *Samuel Barnardiston* the Benefit of the Law, which gives Relief as to all Wrongs and Injuries; and here is a very great Damage to the Plaintiff, and therefore he ought to be repaired.

Secondly, Say they, if it should be allowed that Sheriffs and Bailiffs may make false Returns, and no Remedy but a Hundred Pounds Forfeiture, it would be of dangerous Consequence, and might tend to the packing of a House of Commons, which may overturn the whole Constitution. But the Peers then did not think these Reasons sufficient for this new Action at Common Law, and accordingly the House of Peers affirmed the Judgment of Reversal in the Exchequer-Chamber, and said, the Judgment was well reversed; for that no such Action did lie at the Common Law, though the Injury done did tend to the Plaintiff's Damage; and all the other Mischiefs which are now suggested, were insisted on; and thus it stands to this Day. And yet now 'tis said upon the same Reasons, the Action does lie for this Person, though he be only an Elector, and must receive much less Damage than the Person elected; and there is no one Reason for the Elector, but holds more strongly for the Elected. The Elected cannot maintain an Action, and yet now 'tis clear that one of the Electors may, though he can have no substantial Damage; for if a Man comes and gives his Vote (as here in this Case), 'tis not in the Power of the Officer to hinder him of the Benefit of it; for his Vote will be as well given, as if the Officer had put it down, and this with Respect both to the Person who gave the Vote, and him for whom he voted; and so really 'tis no substantial Damage to any Man.

The next Thing I shall mention to you is another Case of Mr. *Onslow:* He brought his Action against the Sheriff of *Surry* for making such a Return upon him (I believe I have the Gentleman in my Eye who brought that Action); he declared in the same Manner that it was done falsly and maliciously, and had a Trial and a

* Sir *Humphry Mackworth*, in his *Vindication of the Fundamental Right of the Commons of* England, Page 27, saith, In the Case of *Strode* and *Nevill*, *An.* 1655, in an Action on the Case, against the Sheriff for a false Return, to the Damage of 2000l. after Verdict for the Plaintiff, and 1500l. Damages, the Court of *King's-Bench* adjourned the Case into Parliament, *propter difficultatem*, Whether the Action did lie or not? Where it is to be observed, that it was not adjourned into the House of Peers, but into the House of Commons, as the only proper Judges, in all Cases of that Nature concerning Elections: So careful were they of the Rights of the Commons.

And let not the Iniquity of those Times of Rebellion be objected to this Instance; the Argument from thence extremely confirms the Right of the Commons: for if it be considered that *Cromwell* had then created a new House of Lords, and wanted nothing but a House of Commons to establish his Usurpation; that to this Purpose he had formed a new Model of an House of Commons, and overturned the Method of Election, depriving all the Boroughs of their Rights, and causing the Choice and Returns of Members to be made by the County; yet the Name of a House of Commons remained; and even that was so reverenced in those Days, that none would attempt to deprive them of their essential Privilege, of judging of Elections: No Influence could bias the Judges; they thought it so inherent, that they would not presume to intermeddle in it.

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Verdict; and yet notwithstanding, the Court of *Common-Pleas* (being govern'd by Sir *Samuel Barnardiston*'s Case) did unanimously, 33 *Car.* II. say, We must not presume to determine the Merits of Elections or Returns, there is a proper Jurisdiction for it; and they gave Judgment against the Action, and I think he hath acquiesced in it ever since. I am sure I have heard no more of it; the Reasons given by the Court, appear in the Report of the Case in 3 *Levinz*, *fol.* 29, and 30. and are worth the reading.

There was a Case a Year ago between *Prideaux* and *Morris*, in the County of *Cornwal*. Mr. *Stratford* was return'd, and Mr. *Prideaux* brought an Action in the *Common-Pleas*, in the Time of King *William*, against the Viander, for making a false Return against him to his great Damage, and laid it with all Aggravation. This went to a Trial in *Cornwal*, and there was a special Verdict found; and the Question was, Whether this Action would lie before the Commons had determin'd the Right of Election? And the whole Court unanimously gave Judgment, that the Action could not be brought, till the Matter had been first brought before the House of Commons, and they had det rmin'd the Right.

Now here is a total Silence in all Books of the Law, that any such Action as this is doth lie: Here are the Acts of *H.* VI. and King *William*, which provide Remedies at Law, because there was no other Provision before. Here are not only these solemn Judgments in *Westminster-Hall*, but the Judgment of the House of Peers, in the Case most like to this of any that can be thought of, that no such Action doth lie: And yet I can't tell how, there are abroad Persons that endeavour to run upon the House of Commons, and use them ill on all Occasions, and are zealous for this Cause, which seems to be set on foot to undermine all our Elections, and bring them to another Judicature.

Now see the Consequence: No Man ought to have a-foot against him two Judgments at once in two several Courts, whereby one may punish him at the same time for doing a thing, and the other for not doing it. I believe such Proceedings would be look'd upon as barbarous, even in *Turkey*, and yet that will be just our Case: A Gentleman petitions the House of Commons, and says, The Right is in such a Sett, or Sort of Men; as for Example, in all the Freemen, or free Burgesses; and that according to that way of Election he was chosen, and not the Person that is return'd; and this is determin'd by the Committee of Elections, and afterwards by this House, against him that petition'd. This Man goes immediately and brings an Action in *Westminster-Hall* against the Officer that return'd the other; nay, every one of these Persons that he affirm'd the Right of Election to be in, bring their Actions, and it comes into *Westminster-Hall* to be try'd, and the Jury find the Right to be in these Men, as he has alledg'd, contrary to the Determination of the House of Commons, and Judgment is given against the Officer in every one of these Actions, for the Men you have determin'd the Right not to be in. You can't set one of these Judgments against the other; I can't defend myself in *Westminster-Hall*, by saying, The House of Commons have determin'd that these Men, who sue me, have no Right to vote. There is nothing like this in the World, two independent Courts can't controul one another, but both may go on together in the same Cause, and both having a Right to judge, one judges one way, and the other t'other, and the Officer is crucify'd between them.

Let it be consider'd again, that at this Rate none but Knaves, or Beggars, will be Mayors, or Bailiffs, in an Election-Year: For suppose as at *Westminster*, where I think there are Ten Thousand Electors; or suppose it be as in some Towns near *Wales*, for one of which I have the Honour to serve, where Descendants of every Burgess claim a Right to vote, and by Consequence they will bring it in Time almost to all the Sons of *Adam*; for all the Sons, and all the Daughters Husbands, and all their Descendants, claim a Right to vote. Now, what a miserable Case must that Officer be in, when Persons shall come from East, West, North and South, and say their Pedigree is so and so, (for they are good at Pedigrees in those Countries) yet, What a Condition is he in? He's bound to determine whether they have a Vote or not; and tho' he's no Lawyer, or Herald, yet however he's bound to give Judgment one way or another, at the Peril of an Action: And suppose but a hundred Men should bring their Actions against the Officer, what Man can stand a hundred Actions, tho' he be in the Right?

There are not only these Difficulties in the Case, but there is Revenge; and in popular Elections there are those Heats, and the Voters engage with that Animosity, that the losing Side next Day will be ready, perhaps only for Revenge, to send for a Multitude of Writs, and have the Pleasure of ruining the Officer who was against them, tho' he was in the Right; for every one has a Right to bring his Action, whose Vote was disallow'd, tho' it should be found at last that he had no Right.

As to the Words *falso & malitiose* laid in this Declaration, which seem to be a great Ingredient in this Action, I agree, in some Cases where there is a Jurisdiction, these Words may make a great Aggravation of the Offence; but they can't make a thing unlawful that is lawful, nor give a Jurisdiction where there was none before: For no Man will say, if a Person should bring an Action at Common Law for a Legacy, and alledge, That the Executor, tho' he had sufficient Assets, yet he *falso & malitiose* refus'd to pay it; that would give a Jurisdiction to the Courts of Common Law. These Words are *verba Clericorum*, Words of Course for the most part. Besides, how dangerous and hazardous it would be for an Officer, tho' ever so innocent, to depend upon these Words, when every Body knows that Falsity and Malice rest in the Mind, they are in the Imagination, and the Jury that are to try this Action, are at Liberty to judge with what Mind the Officer acted; that would be the hardest thing in the World for an Officer to undergo in every Action. It would be enough for the Jury to presume it was done maliciously, (seeing few Mayors, or Bailiffs, but have their Inclinations, and give their Votes themselves for their Friends,) because the Officer made an Interest for the other Side; and the consequence of this new-invented Action, if countenanc'd, will be, that every Triennial Parliament will bring a Triennial Harvest to *Westminster-Hall*. I speak against my own private Interest, if that was to be consider'd. Elections, without Actions, keep up Animosities too long, so that they are hardly heal'd in three Years Time; but these Actions will help to vex and worry Corporations from three Years to three Years; and Mayors and Bailiffs will be the most miserable Men in the Kingdom, and ought to run their Country, rather than stand a popular Election; whereas the Officer is accountable to you for his Behaviour at the Election.

This is not a Matter that stands in need of the Aid and Assistance of *Westminster-Hall*, that they should invent a new Action and Remedy, as if there was a Failure of Justice. Has any one come with a Complaint against any Officer to this House, and they have not been willing to hear it? Have not the Committee a Right to hear and report Matters with respect to the Electors, as well as the Elected? And have we not known that the Electors, tho' but a small Number of them, (as in a late Case of this sorry Town of *Aylesbury*) about Five, I think, of the Electors came and complain'd, and their Complaints were fully heard. And if any single Elector should come with a Petition, and represent that he was abused by any Officer, or ill treated by any Mayor, or Bailiff at the Election, I don't think but the House would be ready to do him Justice: And they have a Right so to do, for the Officer is accountable to them for his Behaviour. 'Tis not now only so practised, but always was so; for in the same Treatise of my Lord *Coke*'s, *4th Inst. fol.* 49. he says, that they will make him change his very Return; they will make him raze out the Name of one, and put in the Name of the other. So they have a Jurisdiction adequate in this Case; and surely if they can hear the Complaint of several Electors, they can hear the Complaint of any one Elector. I would not trouble you with Arguments that may be proper in *Westminster-Hall*, because we are here upon a Matter of our Constitution; but I know no Action more obnoxious to the true Reason of the Common Law, which abhors Multiplicity of Actions; and a Man shall never have a particular Action for that which naturally draws on Multiplicity of Actions, and may be reform'd in a more compendious Manner. Upon this Reason that famous Case in 5 *Rep.* call'd *Bolton*'s Case, is founded: if a Man builds a Dove-house near a Common-field, where Men make all their Profit by Plowing and Tillage, and therein keeps a great Number of Pigeons that live upon his Neighbours Corn, is not this a great Wrong and Injury to them? And yet no Action lies; for if one Man that is wrong'd thus may bring his Action, a great many more may do the like, and so there will be infinite Actions; therefore it shall be presented in the Court Leet, as that Book says. So there is that Case of *Williams* in the same Book, where the Lord of a Manor had a Chapel for himself and Tenants to repair to, and to hear Divine Service, within the Parish of *Aldbury:* He brought his Action against the Vicar, who was obliged to officiate, for that he had neglected, *&c.* tho' he had used Time out of Mind to officiate, and had an Allowance for it: Says the Case, If this Action should be allow'd, all the Tenants and Servants of the Lord might have the like Action, and so there would be a multiplicity of Actions, and therefore he shall not have this Action; but if it had been to have been perform'd in his own private House or Chapel, he alone might have had an Action. But since it would draw on a great many Actions which may ruin any Man, therefore the Remedy must be taken in such Manner as it is given where there is a publick Offence. In the Case before us, every Person is chosen *pro bono publico*; for tho' he be chosen for a particular Place, he serves for the whole Kingdom; and for that Reason you shall not proceed by way of Action, but in such Manner as it hath been always used, where the whole thing shall be examined at once, and all determined upon one Petition, wherein all the Parties injured may join, instead of a Multitude of Actions.

I shall not propose to you any Thing, but hope you will at least come to some Determinati n that may assert our Right in this Point, that this Door may not be open to bring in a new Jurisdiction to examine and determine whether any of us sit here rightfully or not.

'Tis a standing Order of the House, that no Peer hath a Vote in the Election of a Commoner; but in the next Elections, if this be allow'd, every Peer may vote, for they are Freeholders, and many of them Burgesses and Members of Corporations, and they may all come and demand your Votes, and if refused, bring their Actions.

These, and many more Inconveniencies are obvious, if this Action should be allow'd, and I believe it may have a great Effect upon our Constitution. Very much more might yet be said, but I have taken up too much Time already.

Sir *John Hawkes* (Sollicitor-General, *Temp. Will.* III.). Mr. *Freeman*, we are jealous of our Privileges, and I think we have just Reason so to be; but we must take care that *that* does not carry us too far out of the Way: I would not have it taken for granted, that whatsoever is said against the Lords here, tends to assert the Privileges of this House, or that what is said for the Lords here, is against this House. I am as much for the Privileges of the Commons of *England* as any Man, and I own they have lost a great deal of Power: I think the Commons had a great Power, when the greatest Part of the Judicature of this Government was their sole Right; I mean that of trying the Fact of Causes, which heretofore was in the Commons alone: Nay, if a Peer had had a Matter of Contest with another Peer, or with a Commoner, and Issue was join'd, that Issue was to be try'd by Commoners, and not by Peers. 'Tis true, if the Prosecution of a Peer was in a Capital Matter at the King's Suit, it was to be try'd part by Commoners, and part by their Peers; the Bill of Indictment was to be found by Commoners, but the Issue was to be try'd by Peers: But if a Peer was prosecuted in a Capital Matter by a Commoner, or a Peer, as by an Appeal, the Issue was to be try'd by Commoners. I must confess, as to the Lords Jurisdiction in Matters of Equity, the Commons have great Reason to be jealous, because there all Facts, as well as Law and Equity, come to be try'd and judg'd by the Lords alone.

Sir, I say, when all Facts were try'd, and most of the Officers of Government were chosen by the Freeholders of the County, the Commons were somewhat greater than now they are; when they had the Election the Sheriffs of the Counties; when they had the Election of what they

they called the Conservators of the Peace, Officers that were the same with our now Justices of the Peace, with this Difference only, those the Commons made, these the Crown makes. The Commons had a great Power when they were to elect their Captains that led them out to War, which heretofore they did, and had a Right to do, 'till it was taken away from them by the Act that settles the Militia, though I own it was disused many Years before. The making of Sheriffs is now placed in the Crown; we have nothing left now but Matters of Trials in particular Cases, and even that is so far crampt, that the Jury is returned by an Officer that the Crown puts upon the County.

But yet I am not for carrying Things further than we have a Right to do; I am for keeping what we have, and for that Reason I am not for encroaching upon the allowed Jurisdiction of the House of Lords; we have always allowed them a Right to hold Plea of Writs of Error. The Parliament, in *Hen.* IVth's Time, did declare the Right of Judicature to be in the House of Peers; and I never found any Inconvenience in it, if the Peers kept only to Matters of Law, and left the Facts to be tryed by the Commons; nor did I ever know that Right of the Lords questioned till now.

A great deal hath been said for and against the Right of bringing this Action; I do not think that *that* is now the Question: The Question is, Whether a Judgment being given in the *King's-Bench*, a Writ of Error does not lie in the House of Lords? But whether the Lords did right in giving that Judgment they have now given in the Case before you, that is another Thing. I speak to the Right of holding Plea of this particular Writ of Error; nobody hath denied, but that they have a Right to hold Plea of a Writ of Error in general upon a Judgment given in *Westminster-Hall*; but say they, the Lords ought not to have done it in this particular Case; and several Reasons have been given for it.

First, here is the Privilege of the House of Commons in question in the Case: That hath been argued and insisted on; but I confess, that Argument does not influence me. The Lords have held Plea of a Writ of Error, in which the Privilege of the Commons hath been in Question; and the Lords have done Right to the Commons in it, particularly in that Matter of the Parliament of 1640, when some were supposed to have done irregular Things in the House of Commons, and were prosecuted for it by Information in the *King's-Bench*, and were fined in King *Charles* I.'s Time, whereupon a Writ of Error was brought in the House of Lords, and that Judgment reversed in the Time of King *Charles* II. There the Lords did Right to the Commons in the Matter of Privileges of the Commons, for it was for laying Hands upon the Speaker in this House; and I think every body commended what was done in that Matter by the House of Lords, and nobody ever said but that they had a Right so to do. Some Things are not to be come at otherwise, than by a Writ of Error in the House of Lords; and I believe, if you look a little back, there have been Judgments given in *Westminster-Hall*, not only in Matters of, but against, the Privilege of the Commons; and these Judgments stand unreversed, though I think they are fit to be reversed, and I know no other Method to do it, but by Writ of Error in the House of Lords. I think there is one Judgment upon an Information against the Speaker for licensing Papers to be printed, which he did by Order of the House.

There is another Instance of a Person taken into Custody by Order of this House; it was the Case of Mr. *Topham*, Serjeant of this House: The Party brought his Action, the Serjeant pleaded his Warrant, that it was done by Order of the House of Commons, and Judgment was given against him, and this Judgment stands unreversed.

Now what Method have you to reverse these Judgments, but by Writ of Error? If you think to do it by a Bill in this House, that must likewise pass the House of Lords, and so will be the same Thing as a Writ of Error.

Another Thing is said, That this Person was not damnified; or if he was, there are such a Number of Persons who were then likewise damnified, that may bring their Actions, that nobody will execute such an Office. I think that Argument ought not to prevail, for at that Rate you will allow the Officer not only to be a Judge, but the supreme Judge, and the Parties damnified shall be without Relief; he may do what he pleases, and he shall never be questioned afterwards, save in this House, which I will consider by-and-bye. 'Tis agreed, you may punish an Officer that misbehaves himself in Matters of Elections, and that is practised now very much; but at the same Time you punish the Officer, the Person damnified hath no Satisfaction, though our Law allows Satisfaction in Cases where he that did the Wrong shall not be punished; and allows Satisfaction in all Cases where a Person is punishable, if another hath received a particular Damage.

A Man is liable to be fined to the King or Queen, that is a Punishment; but if he pays so much to the Party damnified, that is Satisfaction. If a Man's Horse breaks into another's Ground, he shall not be punished, but the Person damnified shall have Satisfaction: But in this Case you allow the Officer shall be punished, but you will not allow the Man injured any Satisfaction for the Damage he has received, which cannot be supported by Reason, or by the Authority of any particular Case.

In all Cases I take it to be true, where a Man is punished for doing another Damage, the Person damnified shall have Satisfaction. But that Rule does not hold true in the contrary.

It is said there are a great many Persons concerned, and if you give every one an Action, there will be no End of these Actions, and therefore none shall have an Action. This is a strange Argument: If a Man injures one or two Persons, each shall have an Action for their respective Damages, but if he injures an hundred, none of them shall have an Action; as if when a Man is moderately injurious, he shall make Satisfaction; but if he is extravagantly injurious, he shall be Scot-free, and make Satisfaction to none. This rests to be made good either by Reason or Authority, which hitherto hath not been done. The Case cited, I own, is true, but you must take it with this Difference, if any Thing is done which might have been of Damage to a hundred People, but was of Damage to none, none shall bring their Action, though the Criminal shall be punished; but where there is particular Damage done to any Person, an Action will lie for the Damnification of that Person. If a Man digs a Pit, any Man may fall into it, and no Person shall bring an Action for that; but if any Person doth fall into it, and hath particular Damage by it, he shall bring an Action, and have Satisfaction. And, with Submission, that Argument will not hold, that because a Person may be ruined if he be obliged to make Satisfaction for the Wrong he hath done, therefore he shall not make Satisfaction to any particular Person he hath damnified.

It hath been said, admitting it to be so, that the Party ought to have Satisfaction, yet he ought to take his Remedy in a proper Court; as if a Legacy was given, an Action would not lie in the *Queen's-Bench* for it, which is true. But it would have been well if that Gentleman had told us which was the proper Court to give Satisfaction for the Wrong supposed to be done in this Case. If the *Queen's-Bench* be not the proper Court, what Court is? 'Tis said the House of Commons is a Court: I was always of Opinion it was so: 'Tis a Court of Judicature, my Lord *Coke* says, and a Court of Record. I wonder, when all this is allowed, it should be said this Court hath not a Power to administer an Oath to a Witness; I think that was never denied to any other Court whatsoever. Every Court of Record has Power to administer an Oath; but though this be a Court of Record, this can't, it hath not that Power. It would have been very well if those who are against this Action, could shew us that this is a Court that can give Satisfaction; some Courts can punish, but cannot give Satisfaction, whereof I think this one: Satisfaction was never given here that I know of. Was it ever, or pretended to be had here? In the first Instance, 'tis true, this House hath punished, and by such Punishment compelled the Delinquent to make Satisfaction to a Person by increasing or remitting such Punishment; but that is not the Case before us.

It hath been said, there has been no Instance of this Kind of Action brought, and that the Court of *Queen's-Bench* have declared they have nothing to do with the Business of Elections, for that the Right of Elections ought to be determined here; and for that Purpose the Declaration of the Lord-Chief-Justice *Hale*, in the Case of *Barnardiston* and *Soame*, has been cited. I must confess I cannot but wonder at that Case: We did lately think that the Judgment given in the *King's-Bench* in that Case was rightly given; and afterwards, when it was reversed, People were astonished at the Reason of it, and more, when that Judgment of Reversal came to be affirmed in the House of Lords. Nobody hath ever said why that Judgment was reversed; I do not see but on the same Reason several Judgments within these few Years, nay, even in this Reign, may be reversed likewise. For the Court of *King's-Bench* in that Case did not pretend to a Judicature of determining the Right of Elections, the Matter in that Case had been determined before in this House; but they only gave Damages for the Wrong sustained; that was all the Court did in that Case, and yet that Judgment was reversed. I believe there hath been some Judgment given by this House within these Twelve Months, that where the House hath determined the Right of Election, the Party grieved shall be allowed to maintain an Action at Law for his Damnification.

But I take it that there is a Difference between the Case of *Barnardiston* and *Soame*, and this present Case. Time was when it was doubted, where a Man that was elected, and the Officer refused to return him, whether the Person elected was damnified or not. 'Tis very certain heretofore Persons were not so ambitious of sitting in this House as now they are; and some Persons purchased Charters of Exemption, to be excused sitting in this House: And so it had been practised in the House of Lords. The Act that hath been mentioned before expressly commands, that the Person chosen shall come and be present in Parliament. And afterwards there was a Penalty put upon such as were chosen, if they did not appear here; to which another Punishment was added, which was, The Person elected, if he did not come hither, he should lose his Wages. It was not reckoned a Damage that any Person was not returned a Burgess to sit here, but a Kindness; but that did not hold so in the Case of an Elector. Every body agrees, as the Electors had a Right to chuse, so there was no Statute to compel them so to do; but they looked upon it not only as their Right, but their Interest, to be present at the Elections: And none can say, but 'tis a Man's Interest to make Choice of such a Person to serve in Parliament, who hath the Power over his Estate, and Life too for aught I know, as he could trust. Nobody ever doubted that a Person who had a Right to vote had an Interest, and might be damnified if his Vote was refused. So that none of the Cases that have been put of the Right of the Person elected to serve in Parliament, as Knight of the Shire, or as Burgess, come up to the Case in Question.

I would say one thing as to the Damnification of the Persons elected; there is a late Act that gives double Damages where the Return is contrary to the last Determination. Now I do take it, that Act supposes that a Man might have been damnified before; and if he was damnified before, he was so by the Common Law, for no Statute Law gives him any Damages: 'Tis true, that Statute gives double Damages, but still that Statute supposes there was a Damage before, and builds upon that Foundation; so that, with Submission, that very Statute runs against all the Cases that have been put as to the Persons elected.

'Tis said, at this Rate, the Lords may come to vote in Elections. I am of Opinion the Lords have no Right to vote in Elections for a Knight of a Shire, or a Burgess; and the Reason I go upon is this, every Person who had a Right to vote ought to have contributed to the Expences of him that was elected. If he was a Freeholder, he was an Elector for the County; if a Burgess, for the Borough; and the Expences of the Knight of the Shire were to be levied of all the Freeholders, and the Expences of the Burgesses upon all that were resiant in the Borough. But the Lords were excused of that Charge, they were not to be Contributors to the Expences of a Knight of the Shire, or Burgess, because they were of another House. There was a Law made, which says, that for Lands purchased by any Lords, such Lands should continue chargeable to the Expences of Knights of the Shire, as they

they were before ſuch Purchaſe: ſo that 'tis plain before that Act, the Lands the Lords were ſeized of, or purchaſed, were excuſed of that Charge.

But, Sir, I think this Matter is not to the Caſe in Queſtion: This is nothing but a Collateral Action for a Damnification, whereof the Conſequence is not much, not above five Pounds; though I acknowledge the Smallneſs of the Sum does not influence this Caſe. Nor is the Queſtion, Whether the Lords have done right, or not, in reverſing the Judgment given in the *Queen's-Bench? Humanum eſt errare.* If they have a Juriſdiction, we can't juſtly complain; though I am of Opinion they have done right, I think the Plaintiff in this Caſe was damnified, and I think the Court of *Queen's-Bench* ought to have given Judgment againſt thoſe who did him the Injury for the Damage he ſuſtained; and I think the Lords have done right in reverſing that Judgment, and in giving ſuch Judgment as the Court of *Queen's-Bench* ought to have given.

Sir *Edward Seymour*. 'Tis enough for me that we have the Law on our Side, and we are very much obliged to the Pains and Underſtanding of thoſe learned Gentlemen that opened this Debate, in preſenting us with a true State of our Diſeaſe; it only remains now for your Prudence to apply a Remedy. And I cannot but take Notice, that this is an Action without any Precedent to warrant this Proceeding; and I believe it might have remained ſo ſtill (for I don't think there was Virtue enough in the Cobler of *Ayleſbury*, nor had he Purſe enough), if a Lord had not acted that Part.

For my Part, Sir, I do not think this to be the ſingle Inſtance of the Houſe of Lords we have Reaſon to complain of: I think in a great Meaſure, by their Proceedings, they ſeem to hold forth, *That the Ax is laid to the Root*, and that they have a Diſlike of this Houſe of Commons, and endeavour to get rid of them. I ſhall not inſtance in Particulars, but I hope there is one you will not let go, without applying ſome Remedy to, and that is, that noble Repreſentation in which they have vilified you to the higheſt Degree, and lay all the Miſchiefs of the laſt Reign, and this, at your Door. I could ſhew you, there is nothing in it but Stuff, *Populum fallere*; and we ſee the Conſequence of it, and what Pains and Endeavours they have taken to diſperſe it all over the World, to make Impreſſions upon the People. But that which I would have ſome Reſort to, is this, That theſe worthy Perſons that have ſpoke before, though they have truly repreſented the State of our Condition, yet they have been very tender of applying a Remedy.

It does, I think, conſiſt of two Parts; one is what relates to the inferior Courts, the other to the Judgment of the Houſe of Lords upon this Writ of Error. Now that there is a Right to bring a Writ of Error, the learned admit; but I would take away the Foundation, and make this Declaration:

That no inferior Court below ſhould preſume to intermeddle with the Elections of the Houſe of Commons; and I am ſure then there will be no Foundation for a Writ of Error. In the next Step, with relation to the Judgment given in the Houſe of Lords, 'tis true, the Lords make a great Complaint, That in Matters of Parliament we have addreſſed, without adviſing and conſulting with them. I will not ſay how far 'tis juſtified by their Proceedings; I need not remind you of the Addreſs they made without you, when you addreſſed againſt my Lord of *Worceſter*; before you had preſented your Addreſs, they preſented a Counter-Addreſs to yours. But I take the Diſtinction to be here, 'tis one Thing in Matters of State, and another Thing when the Matter depends between the two Houſes: Where it is a Matter of State, with relation to the Queen's Prerogative being violated and invaded, as you are her great Council, you are to adviſe the Queen in that Matter, and not let any Thing of that Kind paſs upon her.

But howſoever I would go the regular Way, by condemning this Judgment, in relation to the Houſe of Lords; and after you have made that Condemnation, I would apply to the Houſe of Lords, to ſee if they would recede from this Judgment of theirs. But I am afraid Arguments or Debates will help your Caſe but little, you muſt have Recourſe to Remedies that are in your own Power. We ſee what they did upon the laſt Occaſion, when they thought their Privileges were concerned; they adjourned, and all to prepare the Way to make the World believe they were injured, and prepare them for their Proceedings afterwards.

And I ſay, this is not a Thing that falls out by Chance, but carried on by all their Power, to repreſent you as inconſiderable, and to make you uſeful for nothing but giving Money, and then to ſend you Home into the Country. But if you do not keep the Power in your own Hands, you will be without Remedy. I conclude with what I mentioned in relation to the Courts below, to declare, that they have no Power to intermeddle in Matters of our Elections.

Marquis of *Hartington* (afterwards Duke of *Devonſhire*). I ſhall not pretend to follow that honourable Gentleman near the Bar, in all the Steps he hath made, though I think I may be as regular as he. I think he hath only ſhewed, That there is not ſo much Reaſon in this Caſe to find Fault with the Lords, but it is neceſſary to find Fault with them one Way or another.

I think this is a Matter of great Conſequence, and as long as I ſit here, and as long as I live, I ſhall be as tender of the Privileges of this Houſe as any Body. I think 'tis upon the due Balance of both Houſes that the Safety of the whole does conſiſt; and I muſt confeſs, I think the Liberty of a Cobler ought to be as much regarded as of any Body elſe; that is the Happineſs of our Conſtitution.

I think it was very well obſerved by an experienced Member, That this Writ came very regularly before the Lords: If ſo, then I think the Queſtion is between us, and the Perſons that elected us; and I think, though Gentlemen would not formerly allow of any Diſtinction between the Privileges of the Houſe, and thoſe of the People of *England*, yet they muſt allow it now, or they can't complain that this Action is any Prejudice to this Houſe. For when a Perſon offers his Vote at an Election, and is not admitted to give it, and upon ſuch Refuſal brings his Action in the Courts in *Weſtminſter-Hall*, (which I take to be the preſent Caſe) if giving Judgment upon it be contrary to the Privileges of this Houſe, then 'tis pretty plain, that our Privileges do interfere with the Rights of the People that elected us.

I ſhall plainly give you my Opinion in this Caſe: I can't think this Action to be a Breach of the Privilege of this Houſe; for, Sir, the Party grieved, can be no way relieved, but by applying to the Law, and I think the learned Gentleman below, is out in all his Inſtances; for he hath given an Account of People injured applying to you, but they were Candidates, and certainly that was their proper Remedy; but in the Caſe of an Elector, I don't ſee he can have Satisfaction by applying to you.

Gentlemen talk of the Law of Parliament; I can't ſee how that can give any Interruption to the Law of the Land, that it ſhall not do Right to the Party grieved: How ſhall a Man, injured in the Manner I have mentioned, receive Satisfaction by applying to the Parliament? 'Tis true, the Officer offending may be puniſhed, but the Party injured can't receive that Satisfaction he would in the Courts below, by giving him his Damages.

I think this is a Matter of great Conſideration, and it is neceſſary to conſider well of it, and not to determine raſhly. I think it may be of Uſe to us, ſince there are Judges who have been of Opinion, That the Subject ought not to have his Remedy in this Caſe. A Judge that will out of Fear, or any Regard to one Houſe, do contrary to his Oath, I believe at another Time will be influenced by the other. I think 'tis the Duty of a Judge to act according to Law, and not be afraid of either.

Mr. *Lowndes*. Sir, There is no Doubt but all the Judges (as hath been ſaid) and every Body elſe, are obliged to behave themſelves according to the Laws of the Land: But the Queſtion is, What is the Law of *England* in this Caſe? If the Houſe of Commons has an original Right to determine all Matters concerning Elections of their own Members (as it hath been always underſtood to have), and if we have a Power to puniſh Officers for making falſe Returns, or any other Miſfeazances committed by the returning Officers; then it will not be neceſſary that the Judges in *Weſtminſter-Hall* ſhould have any Juriſdiction at all in the Matter now in Queſtion; and if they have none, then by conſequence the Lords will have as little by Writ of Error.

I do confeſs, Sir, when I firſt heard of this Caſe, it gave me ſome Apprehenſion that it might be of fatal Conſequence (by Reaſon of the Novelty of it) to your Privileges, which are indeed the Privileges of the Commonalty of *England* which we repreſent: But ſince I have thought of it from Time to Time, and it hath been better opened by the learned Gentlemen that have ſpoke in this Debate, I conceive our coming to ſome Reſolutions, declaratory of our Right in this Affair, may preſerve the Liberties of this Houſe, and of all the Commons of *England*, who have entruſted us with the Preſervation of their Rights.

I think the learned Gentleman over-the-way took his Ground too narrow; I might yield him this Point, That where there is a Writ of Error brought from a Judgment in *Weſtminſter-Hall*, in Caſes where a Writ of Error lies, and where that Court and the Houſe of Lords have a Juriſdiction, there the Houſe of Lords are at Liberty to give what Judgment they pleaſe. But I have read, the Houſe of Lords is not an unlimited Juriſdiction, but is bounded, as well as the Courts of *Weſtminſter-Hall*, by the Law of *England*. I ſpeak it with the greateſt Reverence, that the Regal Power (which is the moſt Supreme in *England*) is obliged to the Obſervance of the Laws; and it would be abſurd at the ſame time to ſay, That any Part of the Parliamentary Conſtitution is not limited by the known Laws of the Land, or the Laws and Cuſtoms of Parliament; and I doubt not but it will appear, a Writ of Error doth not lie, and never did lie before the Lords in ſuch a Caſe: And ſo it comes at laſt to this Point, What is the Law of *England* in this Caſe? And I will tell you my Thoughts of it.

I have read, and learned, and believe 'tis true, That Matters of Parliament are to be determined by the Laws and Cuſtoms of Parliament; and I believe there is as good Authority for it, as there is for Writs of Error, or any thing elſe; and that this Law and Cuſtom of Parliament is a principal Part of the Law of *England*, and to be learned by Experience and Precedents, and I reckon that we muſt come to them at laſt. Now, Sir, let us ſee what Experience or Precedents we have to found this Juriſdiction of the Houſe of Commons upon, for examining and determining Matters concerning their own Elections. 'Tis true, we have no Journals extant before *E.* VI.'s Time: And there is a Book they call *Seymour*, I think 'tis a Book of no great Authority; and if it be, there is but a ſmall Matter in it. I have read it over carefully myſelf more than once, and find only Titles of Bills depending, and when they were read; and all I learned from it was, that ſometimes Bills in thoſe Days were read four Times. And, Sir, there is as little concerning Elections in Queen *Mary*'s Reign; but in the Beginning of Queen *Elizabeth*, you have the Matters of Elections plainly ſet down, and ſo they have been ever ſince. And from that Time to this, it hath been a ſtanding Rule in the Houſe of Commons, in the Beginning of every Parliament, and (as I take it) of every Seſſion, to appoint a Committee to examine all Matters concerning Elections. Now, if the Right of Electors is not a Matter concerning the Election, then I own myſelf under a Miſtake: But if that be a material Part, and comprehended within the general Words; and if thoſe Committees have from Time to Time proceeded to examine the Right of Electors, and this Houſe hath proceeded from Time to Time to give Judgment in ſuch Caſes, ſometimes according to general Qualifications ſettled and adjuſted in the Houſe, and very frequently upon examining and conſidering the Rights of particular Voters, then I think we have as good Authority for the Juriſdiction of this Houſe in the Matter of theſe Elections, as can be had for any Thing whatſoever.

I do ſay in this Caſe, we ought to take our Ground and Foundation upon the Right which the Commons of *England* have, and ever had, by the Law and Cuſtoms of Parliament, to be exerciſed by the Repreſentatives of their own chuſing; which Right is grounded upon manifold Precedents and conſtant Uſage. For if we have a Power to hear and determine the Right of the Electors, and to puniſh Officers for abridging them of their Right, and give Satisfaction to the Party, all which moſt evidently appears, not only in your Journals, but by a continued and uninterrupted Practice, Time out of Mind; then I think we need look no further.

I do

I do say, that from Time to Time there has been never a Session of Parliament, but this Power has been exercised; and in your Committees they have often come to Resolutions to determine the Right of all Electors, and frequently of particular Electors; and for that Purpose only they have examined, whether Persons had Burgage Tenures, or have paid Scot and Lot, or have been Freemen, and other Circumstances necessary for the Information of the Committees; and as Matters have appear'd, they have judged them qualified or unqualified: And where the Votes of Persons having Right have been offered, though refused at the Election, the Committees have usually allowed those Votes as if they had been given, and upon their Determination the House have agreed with the Committee very frequently, and sometimes have disagreed with the Committee, as the Merits of the Cause have appeared to the House. So that nothing is plainer, than that the House of Commons have, from Time to Time, exercised this Jurisdiction in all the Parts of it; and sometimes Elections have been tried at the Bar, and determined by the House upon such Trial.

Then how comes this Action to be brought in *Westminster-hall?* I have considered that Point, and take nothing to be plainer than this, That *Westminster-Hall* never had a Power to meddle with Elections, but where by some special Act of Parliament you have given them Power. I know that there are some Opinions, that Elections have been try'd in Chancery, and in the House of Lords: But I can't find any thing of that Nature ever settled, though some Attempts have formerly been made that way. I know that Witnesses have been carried up sometimes to the House of Lords Bar to be sworn, but the Trial of Elections, and of the Right of the Electors, hath always been in the House of Commons; so that here would be no Defect of Power, or Justice, if nobody else meddled in this Matter.

Then consider what Acts have altered this Original Right: I think there are two that are most material to be considered; one is that of 23 of *H.* VI. *cap.* 15. What is the Importance of that? It takes Notice, that convenient Remedy for the Party griev'd was not ordain'd in the former Statutes against Sheriffs, Mayors, and Bailiffs offending; whereby one would infer, that the Parliament in those Days did not think, or know any thing of the Remedy now endeavoured to be set up in *Westminster-hall*, and the House of Lords. And this Statute provides, that if any Sheriff do contrary to the Statutes about Elections, he shall incur the Penalty of the former Statutes, *viz.* one hundred Pounds to the King, and a Year's Imprisonment, and shall forfeit a hundred Pounds more: To whom? To the Party that ought to have been return'd, and if he do not sue, there is an Action given for the same to any body else: And a Mayor, or Bailiff, for a false, or undue Return, is to forfeit to the King forty Pounds, and forty Pounds to the Party that should be return'd; and if he do not sue, then a popular Action is given for the last Penalty: So it is plain by this Statute, no Action is given to the Voter, who had his Remedy in the House of Commons. Your Ancestors were so careful of your Liberties, that they never trusted their Elections to all Persons; such as held in Villenage, all Customary Tenants who held at the Will of their Lords, and might be influenced by them, and (as I take it) Tenants by Escuage, 'till Escuage was reduced to Certainty, were excluded, and afterwards all Freeholders under forty Shillings a-Year: And when the Officers were by Law to admit some Votes, and reject others, they were to use the best of their Judgments, without being liable to Multiplicity of Actions, (unless in the Cases I have mentioned,) but for their Defaults were always responsible to the House of Commons.

Let us consider then the Statute in King *William*'s Time, I think 'tis in the seventh Year of his Reign; there the Statute takes Notice of the Injury done to Gentlemen by double and false Returns, and thereby a double Return is made a false Return; and by that Statute 'tis provided, That if any returning Officer return contrary to the last Determination of the House of Commons of the Right of Election, such Return is thereby adjudg'd to be a false Return, and void.

This Statute of the seventh of King *William*, admits the very Determination of the Right of Election to be in the House of Commons; it does not say the Determination of the Election, but of the Right of Election. I will endeavour to avoid Repetition.

But how does this Matter stand by the Law and Custom of Parliament, which is a most material Part of the Law of *England?* The House of Commons have the Jurisdiction in these Matters of their Elections, but by one or two Statutes, the House of Commons have given Power in one or two Cases to proceed in the Manner therein prescrib'd; but none of the Cases allow'd by those Statutes, are like the Case of this Man at *Aylesbury*, for he is not a Person who has suffer'd because he was not duly return'd, nor the Person mention'd in 7 *Willielmi*; nor is his Action founded upon any Statute; so that this Case is left out of the Statutes, and it must be determined according to the Law and Custom of Parliament.

As to the Case of Mr. *Nevill*, it never came to be determined in Parliament: We read it was put off to the Parliament, because of the great Weight of it; and the Judges were of Opinion, That it was a Matter too high for them. And in the Case of Mr. *Onslow*, where the Case of Mr. *Nevill* was cited, they positively said, It was a Matter of too great Presumption for the Judges to meddle with it.

Then how comes it to pass, if this Action might have been brought at Common Law; I say, how comes it to pass, that this Action was never brought before? Certainly that is an Argument it never lay, for there must have been Occasion for such an Action, if the Common Law would have maintain'd it. But the Judges, who knew best the Grounds and Reasons for this pretended Action, have refused meddling in this Matter, because it concern'd the Parliament, and the Parliament had not entrusted them with it.

As to the Case of *Barnardiston* and *Soame*, first adjudg'd in the *King's-Bench*, the Reason was, because it had been adjudg'd in Parliament; for Sir *Samuel Barnardiston* had a Majority by near a Hundred, and the House of Commons had tried the Cause, and gave him his Right of sitting in this House; so that one would have thought that he had Liberty to have gone into *Westminster-hall*. But afterwards this Judgment was revers'd in the *Exchequer*; and Judge *Ellis* in his Argument says plainly, That the Right of determining Elections belongs to the House of Commons, and the House of Commons have determined it for Sir *Samuel Barnardiston*, and for that Reason you ought to affirm this Judgment.

This Matter was brought presently after the Revolution into the House of Lords; and when it came there, all but Five or Six Lords were for affirming the Reversal. Now, Sir, by reading the Reasons of these Five or Six Lords that dissented, we may easily infer what were the Reasons that induced the whole House to affirm the Reversal. Two Reasons were given: First, said they, because otherwise there will be a Defect of Justice. One may infer, if these Five or Six Lords were of Opinion, that there would be a Defect of Justice, all the other Lords were of Opinion, there would be no Defect of Justice. The Five or Six Lords that dissented, said, That the Plaintiff ought to have this Action by the Common Law. Certainly, if the other Lords had been of this Opinion, they would have maintain'd the Action; but they concluded no such Action did lie; because no such Action was given by the Common Law.

I take this Matter to be of infinite Moment, and I think there is no Degree, or State in this Realm, but what is bound by the known Laws of the Land; and if the Lords in Parliament, and the Judges are limited by the Laws of the Land, so that they have no Jurisdiction in this Case, then I do not see how a Writ of Error can give them Jurisdiction.

Sir, I appeal to you, and all the Gentlemen here, Whether what hath been said on one Side hath been at all answered by the other: If an Action of *Scandalum Magnatum* should be brought against a Member for what he has said in this House, no doubt but that Member would plead the Privilege of this House, and 'tis to be hoped the Judges would allow it, and put the Plaintiff off *sine die*. But notwithstanding, a Writ of Error, according to this Doctrine, might be brought, and the Lords might give Judgment that this Action does lie, and then what would become of your Liberty of Debate? This is an Instance worthy your Regard.

It hath been told you, how the Lords have taken Notice of the Privileges of this House in the Case of *Hollis* and *Elliot*. Let that be set in its true Colours, and see whether any Thing can be drawn from that Case to fortify the Judgment lately given in the House of Lords. There was a Disorder in the House of Commons, and the Speaker was violently fore'd back into the Chair, and scandalous Words against the King's Privy Council and Judges were utter'd by *Elliot*, *Hollis*, and others; and upon that a Prosecution was brought, 5 *Car. primi*, against those particular Gentlemen in *Westminster-hall*, as well for the Words spoke in the House of Commons, as for the Force, and Fines were set upon them. This Matter, after the Restoration of *Charles* II. was brought before the Lords at a Conference, and they took Notice of the Privileges of this House, not to set them aside, but to confirm them; and their Lordships declared the Judgment to be illegal, and against the Freedom and Privilege of Parliament, and desired the Lord *Hollis* to bring the Roll before them by Writ of Error; and so by Agreement the Judgment was revers'd, as being against the Freedom of Speech in Parliament, allow'd by *Strowd*'s Act, which their Lordships acknowledged to be declaratory of the ancient and necessary Rights and Privileges of Parliament. Their Lordships then would not let any Matter appear upon Record to destroy the Commons Privileges, and I wonder how this Precedent comes to be cited, to justify a Proceeding which tends directly to take away your Privileges.

I wish with all my Heart the House would have appointed some Persons to have searched Precedents, and I am sure they would have found an infinite Number to be produced, to have justified the Power of the House in this Case, how it hath been in their Power, Time out of Mind, how they have a Power to punish Officers, and, in some Instances, they have given Damages.

I remember one in my Time; Mr. *Tankred* caused a Person to be brought hither, and he clear'd himself; and the House (as I remember) made an Order, That as he was the Occasion of the Man's coming up, and had done him an Injury, he should make him Reparation, and he was forc'd to do it, by paying him a Sum of Money.

Not that I would go so far as to say, That this House is a proper Court for imposing Fines: But if they are not a proper Jurisdiction for the Business of their own Elections, I think they have no Jurisdiction at all. I will not say this House has a Power to fine: I know we read something of that in your Journals, but I think those Fines came to nothing, because there was no Means to estreat them, or cause them to be levied; and so that Matter has slept ever since, and, I hope, will for ever.

But not only your Freedom of Debate, but Right of Sitting in this House, is concern'd in this Case: And if you have not a Power to determine Matters of Elections to this House, I wonder how any Author comes to say this House has any Judicature at all; for if they have not a Jurisdiction to this, they have no Jurisdiction to any Purpose whatsoever.

If this Point be settled, That this Power belongs to the House of Commons, the next Consideration will be, how to attain it; and in this, I hope Gentlemen will take such Steps as are proper for them, and for those they represent; for we are sent here *ad tractandum*, &c. in the Name of those we represent: And we have but a delegated Power, and can't, without Breach of Trust, give up the Rights of the Commonalty. For my own Part, I have taken an Oath to preserve the Privileges of the People that chose me, but without such an Oath, should be of Opinion, that I cannot give up this Privilege which I am to execute on their Behalfs; but I will use all the lawful and just Methods I can to come at it, and I think you may do this, without interfering with the House of Lords, or the Judges. There is no doubt, but the Judges in *Westminster-hall* are bound to take Notice judicially of your legal Proceedings here; and if you come to make a Declaration, "That the Power of hearing and "determining all Matters concerning Elections does belong to the "House of Commons in Parliament," I doubt not, but they will take Notice of it as becomes them. And give me Leave to say, nobody can help bringing this Action as this was done; for a Person may take out a Writ and declare upon it, and carry it down to Trial, without the Privity or Knowledge of any Court; and then when the Cause is tried, the other

Side comes and moves in Arreſt of Judgment, and the Court gives Sentence. But I wiſh the Defendant had demurr'd, and then that would have put it as a Point of Law to the Judges; and if they had determin'd it judicially for you, I believe it would have gone no further. For it is one Thing to determine it upon Demurrer, and another Thing, when the Cauſe has been try'd, and Damages given, to have the Court's Opinion *ex poſt facto*.

The Judges determined, the Action does not lie; but as Matters ſtand now, perhaps, in the like Caſes, there will be brought a Writ of Error before the Lords, and they will give ſuch a Judgment as they have given now, for aught I know. I ſhould not think it proper to come to any Queſtion now, by which you ſhall determine your Right, if you are not fully ſatisfied about it; but it ought to be conſidered farther. The Law and Cuſtom of Parliament is to be found out by Experience and Precedents: But if you are ſatisfied, then I think the proper Queſtion is, "That "by the Law and Cuſtom of Parliament, the hearing, examining, and "determining all Matters concerning Election of Members to ſerve in "the Houſe of Commons, is to be by the ſame Houſe." I think that is to be your Queſtion, or to that Effect.

The Conſequence will be, If this be Part of the Law of *England*, as it plainly is, you may as well ſtand upon that Declaration, as upon any new Law to be made by Parliament, if you could get it: But I believe you have no great Reaſon to expect a new Law in this Caſe to paſs in the Houſe of Lords. Then what would you do? If you ſhould try to get a new Law, and fail, it will be conſtrued, that you had not this Power before, but endeavoured to get it, and the Houſe of Lords denied it you.

But 'tis plain and clear you have this Power already, and a ſufficient Ground to ſtand upon; and I doubt not, but *Weſtminſter-Hall* will take Notice of it, and the Houſe of Lords too: If they do not, *(here Mr.* Lowndes *was interrupted by a Noiſe made by ſome few of the Members, who ſaid*, What then? *But he proceeded)*, I ſay, if they do not, it will be Time enough to confer with them afterwards: And give me Leave, I am not afraid to ſay, if a private Man, much more the Houſe of Commons, have the Law of *England* on their Sides, let them be undermin'd ever ſo much, one Way or other, they will obtain their Right ſooner or later. The Rights of the People of *England* are ſafer in the Hands of their Repreſentatives than any other: If they do not like them, they can turn them out, and chuſe new ones; but they can't do ſo in the Caſe of the Lords.

I beg Pardon for my great Prolixity; I take it to be of Importance, to avoid all Conteſts with the Houſe of Lords, and with *Weſtminſter-Hall*, and I think you may do it by propoſing and adjuſting a plain Declaration of your Right by the Law and Cuſtom of Parliament.

Mr. Solliciter-General (Sir *Simon Harcourt*, afterwards Lord *Harcourt*, and Lord Chancellor). After what hath been ſaid at large concerning the Law in this Caſe, eſpecially ſince it hath received no Contradiction in any Inſtance whatſoever, I will avoid the Repetition of what has been already offer'd, and endeavour to ſhorten your Debate, by bringing it ſomething towards a Point.

It hath been ſaid, That the Queſtion now before you is, Whether Judgment being given in the Court of *Queen's-Bench*, a Writ of Error does not lie in the Houſe of Lords, to reverſe that Judgment? I cannot, by any Means, agree that to be the Queſtion.

But that which I take to be the proper Queſtion before you is, Whether or no it be the ſole Right of the Commons of *England* to determine their own Elections? If you are of that Opinion, never let your Diſeaſe grow to ſuch a Head as to put you upon the Neceſſity of complaining of a Judgment of the Lords, but rather check it in its Infancy.

It may perhaps ſound harſh, That a Man ſhall not be admitted to make Uſe, and have the Benefit of the Law; and yet when that Thought is thoroughly digeſted, I believe no Gentleman in this Houſe but will agree, That there may be many ſuch Inſtances, where you will not endure any Suit at Law. I can't give you any better Inſtances, than what have been mention'd to you by a learned Gentleman on the other Side, who approves of this Proceeding by Writ of Error; the Proſecution againſt Sir *William Williams* for publiſhing a Libel (as it was call'd) by Direction of this Houſe, and an Action againſt the Serjeant for obeying your Commands. If ſuch an Action ſhould be brought againſt the Speaker or Serjeant, ſhould we ſit ſtill here to ſee what they would do in the Courts below, and afterwards wait for the Event in the Houſe of Lords by Writ of Error?

'Tis very true, theſe Judgments that are mention'd by that Gentleman continue ſtill unrevers'd. As to that given againſt the Speaker, he mention'd it as a Precedent not fit to be follow'd; indeed, 'tis a Reproach to the Houſe to mention it, ſince no Parliament hath reverſed it. As to the other Action againſt the Serjeant, he ſays, Judgment was given againſt him, and that ſtands in full Force; as I remember that Caſe, it went off upon the Form of Pleading.

But nothing of that Kind being the Queſtion now, I beg Leave to ſtate what this Action is that is now before us: For Gentlemen in the Country, who have frequently met with Actions, proſecuted without Cenſure for Matters relating to Elections, may, perhaps, be ſurpriſed, 'till they come to conſider what the Point is. This is not an Action grounded upon any Statute whatſoever. 'Tis agreed an Action may be maintain'd where a Statute gives a particular Remedy, but this is an Action founded upon the Common Law. Whatever your Privileges are, if you will conſent to an Act of Parliament to make other Perſons Judges of thoſe Privileges, ſo far as you conſent, if they purſue the Power given them by Act of Parliament, there is no Wrong done you: But an Action brought at Common Law is that which, I think, interferes with the inherent Right of this Houſe.

We have, I think, attain'd to one Piece of Knowledge upon this Debate, That this was the firſt Action that was ever brought of this Kind; and Gentlemen will not much wonder why this is brought now, when they conſider what Endeavours have been uſed to make this Houſe contemptible. I believe this may be thought the moſt probable Method to attain that End.

I would not repeat the Precedents that have been quoted, yet I can't but take Notice of that of *Barnardiſton* and *Soame:* Thoſe Arguments that were made uſe of for this Judgment in that Caſe were rejected, and the Judgment of the Lords was then directly contrary. I ſhould be very glad to hear how the Lords Judgment of Reverſal in that Caſe, and in this, are reconcileable. The Commons, at that Time, would ſcarce have ſuffer'd ſuch an Attempt upon their Privileges, and I hope we ſhall be as careful and as zealous to preſerve ours: We have as much Power as our Predeceſſors, we ſhall never ſuffer for want of Power, if we do not ſuffer for want of Will to exert it.

I expect to hear of the great Authority of one learned Judge, that differ'd from the reſt; I have the utmoſt Eſteem for his Judgment, but am ſorry to hear any Inſinuation, that thoſe Judges who have given their Opinion otherwiſe, are guilty of a Breach of their Oaths. It hath been touch'd upon, That whenever any Queſtion has been aſk'd the Judges concerning the Privileges of the Lords, or the Privileges of the Commons, their Anſwer is recorded for the Inſtruction of all their Succeſſors, and to the Honour of both Houſes of Parliament, That it was a Matter above their Knowledge: The Law of Parliament is above the Judges of the Common Law, and is not to be ſubject to their Judgment; 'tis *alieni fori*.

And, Sir, as I have been inform'd, this was the Anſwer given in the Houſe of Lords by one of the preſent Judges, and by what I have heard, it was well he eſcap'd their Cenſure; ſhewing too much Reſpect to this Houſe gave very great Offence.

I beg Gentlemen to conſider, (I ſhall not enter into Particulars that have been mention'd) Whether any thing of this kind would not make you deſpicable, to the loweſt degree in the World, and expoſe Electors to ſuch Miſchiefs that none could endure? Upon every Election that comes before you, 'tis impoſſible to judge the Right of Election, but by the Right of the Electors. If you will endure any Perſon, after you have ſaid he has no Right, to go into *Weſtminſter-Hall*, and bring an Action in the Courts there, a Jury may find a Verdict, That the Houſe of Commons are miſtaken, and that this Perſon hath a Right, and Judgment ſhall be given accordingly. Will not this Proceeding, that very Moment, ſubmit your Reſolutions to the Examination and Cenſure of the inferior Courts? May not they ſay, They Vote for one another, we have detected them all. That they are a Parcel of People pack'd together, and not one of them elected as they ſhould be.

What Condition the Magiſtrate will be in, hath been mention'd already; when a Multitude hath a Right, and every body may bring his Action, Can any Magiſtrate (a Conſtable, as in this Caſe) bear the Expences of a hundred or a thouſand Actions at Law? There will not be wanting ſome to proſecute a Magiſtrate with all the Violence poſſible.

Tho' I can by no Means agree, That this Matter is to be determin'd according to the common Rules and Methods of Law, but according to the Courſe of Parliament; yet I ſhall compare it with ſome other Caſes in the Law.

That which makes theſe Perſons Hardſhips the greater, is, Theſe Magiſtrates are not People that officiouſly interpoſe to take a Poll at Elections, and make a Return; but theſe are Men, who, by the Duty of their Office, are oblig'd to do it; and if they do not execute their Office, you puniſh them; and if they do execute their Office, and give you Satisfaction, yet if you let this be examin'd in another Place, after you have ſaid they have done well, they may be puniſhed for doing ſo.

I will compare this with one or two common Caſes that have not been mention'd: Suppoſe a Perſon ſhould exhibit an Indictment againſt another maliciouſly, he does this wilfully, and an Action does lie againſt him; but if a Grand Jury-man find a Bill againſt a Man, the Law will not admit an Averment that it was done maliciouſly, becauſe he was oblig'd by his Office to do it: So it is in the Caſe of a Witneſs, becauſe he is brought in by the Proceſs of the Court: So it is in the Caſe of Judges. And is it not equally the Duty of a Magiſtrate to determine upon the Poll, and afterwards to make a Return? And is not that examinable before you?

A great deal might be ſaid further upon this, but I hope 'tis pretty unneceſſary: And that nobody can have any doubt but that our Privileges are very much concern'd in this Queſtion, and what the Conſequences would be; therefore I would humbly propoſe for the Queſtion what another Gentleman hath hinted at, which may reduce this Debate to a particular Point.

We certainly have ſuch a thing as the Law and Cuſtom of Parliament, and that is very well known; and upon that Foot I deſire you would put a Queſtion to this Effect:

"That the ſole Right of examining and determining all Matters re-
"lating to the Election of Members to ſerve in Parliament, except in ſuch
"Caſes as are otherwiſe provided for by Act of Parliament, is in the
"Houſe of Commons; and that neither the Qualification of the Elec-
"tors, or the Right of the Perſons elected, is elſewhere cognizable, or
"determinable."

Members. The Queſtion, the Queſtion.

Mr. *Smith.* Sir, I ſpeak only to your Order, That Gentlemen would not interrupt one another by calling for the Queſtion, but give diligent Attention to the Debate, for this is a Matter of great Conſequence.

Then Mr. *Freeman* (in the Chair) ſtated a Queſtion on his Paper to the Effect propos'd by Mr. *Sollicitor*, and read the ſame to the Committee.

Sir *Chriſtopher Muſgrave.* I am very willing to hear any Gentleman that will ſtand up and ſpeak, and you have had a very good Hint given you by an honourable Perſon, that this is a Buſineſs of great Moment; and I hope we ſhall continue to do as we have done, that is, to hear Gentlemen patiently; and that we may not be guilty of any Diſorder, I move you for Candles to be brought in.

Then the Queſtion was put, and carried for Candles.

And they were brought in accordingly.

Mr. *Dormer* (afterwards a Judge). Mr. *Freeman*, you have now a Queſtion upon your Paper, but that which I take to be the Queſtion, is, "Whether a Freeholder, or a Freeman, who hath a Right to give his "Vote for his Repreſentatives in Parliament, may arbitrarily and ma-
"liciouſly

" liciously be deprived of that Privilege, without any Redress in any " Court whatsoever?"

This I take to be the Case before you; 'tis said to be of great Consequence, and I do take it to be of as great Consequence as any Thing that ever came before either House; and I don't look upon it only to concern the Jurisdiction of the Lords and Commons, but to affect every Part of the Constitution, and the Queen, the Head thereof, in the highest Degree. For it comes to this, If the Lords have not a Right to determine in this Matter, which by Writ of Error is regularly brought before them, we shall be turned into a State of Villenage, and the People will be deprived of chusing their own Representatives without Relief, and shall not have Relief by her Majesty in the Court of *Queen's-Bench*, nor before her in the Court of Parliament, where, in Consideration of Law, she is always present, and where by our Law is the last Appeal; and there will be a Failure and an Interruption of Justice, and our Constitution, in relation to ourselves, will be so far changed, that 'twill be impossible there should be any right Representatives of the People: For 'twill not be the People then that will chuse, but the Officer may arbitrarily refuse and return whom he thinks fit, and the particular Person will be without Remedy. For whatever Gentlemen apprehend, if the Right of Return be not controverted, which Way can any particular Man bring his Case before you? And what Remedy shall he have, if not by Action? I will not say there has not (but I will turn the Argument, and put it upon them to shew there has), but I believe there never was any particular Application to the Committee of Privileges, where the Injury has been done to a particular Man, which is the present Case: And this Matter is found by a Jury that was struck, and not one Man of the Jury but of Quality, and approved on both Sides: And I think, though it never came before the Parliament, nor the Committee of Privileges, they might consider of a particular Injury.

And as for the Notion that hath been taken up, That where the House of Commons have a Jurisdiction, there the Party is in all Cases without Remedy in any other Court: Sure that is not according to Truth; for in the Case of a false Return, there is a publick Injury, that does not hinder the Party from obtaining Satisfaction as to his particular Injury; and if no Action lies, there can be no Satisfaction; for this House hath not awarded Damages in any Case, notwithstanding the Case cited; for that was only Costs for the Man's Trouble in coming up to be examined before this House. And if they should award Damages, there is no Way of levying those Damages: What Writ can we issue out? And if this Person be without Remedy at Law, he must sit down without any Redress whatsoever.

There may be a Multitude of Cases where this House hath a Jurisdiction as far as concerns the Publick and themselves, and the Party shall have his Action also.

If I receive a Blow in this House, 'tis a Violation of the Privilege of this House, and this House can take Jurisdiction of it, and censure the Person that hath done the Injury; but will any Man say, That an Action of Battery will not lie at the Common Law in that Case?

There was the Case of Sir *Thomas Clarges*: At the Time of his Election there was one *Roe* spoke Words to his Prejudice; he might certainly have complained to this House of it (you had an Instance, I think, last Session, of one that complained for some such Injury against the Lord Bishop of *Worcester*, and the House took it into Consideration, which Sir *Thomas Clarges* might have done); but he brought his Action, and recovered considerable Damages; and afterwards a Writ of Error was brought in the *King's-Bench*, and Judgment was affirmed.

There is a Case not within any Provision of your Law, and that is, where a Sheriff made a Return, and he delivered this to a private Messenger to bring up to the Crown-Office. The Messenger, by the Way, thought fit to vitiate the Return, and make another Return than what he received from the Sheriff: For this an Action was brought, and he recovered at Law against this Messenger for the private Damage he had done him. Certainly otherwise the Law would be defective.

In another Case, the Sheriff adjourned, in prejudice to a Candidate, to a Corn Field; an Action was brought against this Sheriff at Law for the Damages he had done this Gentleman, and it was maintain'd; and I dare say more Cases may be put: Which shews that you having a Jurisdiction as to what concerns the Publick, does not exclude the Party, but he may have an Action for his private Injury.

A great many Positions I have heard, which I take not to be true, particularly this, " That there is no Remedy at Law, but in Cases pro- " vided for by the Statutes:" That is not so, these Statutes imply the contrary. The first says, Whereas there was not a sufficient Remedy, therefore that gives a more compleat Remedy, and so the Judges declared in the Case of *Barnardiston* and *Soame*.

Sir, They have told us of the Cases of *Barnardiston* and *Soame*, and of *Nevill* and *Strode*; with humble Submission to you, those Cases go so far as to prove the Jurisdiction of the Lords, and the inferiour Courts: That of *Barnardiston* and *Soame*, was an Action tried before the Court of *King's-Bench*, and a Sett of as learned Judges as ever were before, or since, and three of them were of Opinion for the Action, and my Lord Chief-Justice *Hale* was one of them; who, the Term before he surrendered his Character, did thus express himself: " He gave Thanks to God that he " had spared him to that Time; that he was able to keep his Cushion, and " declare his Conscience in that Place." But afterwards it had its Fate, a Writ of Error was brought in the Exchequer-Chamber; Mr. Justice *Levinz*, that reports it, says it appears, That those who argued against the Judgment in the *King's-Bench* were made Judges, and they themselves afterwards determined the Case. And every body knows how valuable it was at that Time, to know the Price of an House of Commons, and an *English* Parliament. Three Judges were then made in the Exchequer, and I think two in the Common-Pleas. Afterwards it came into the House of Lords, and there the Reversal in the Exchequer was affirmed, for Reasons different to what are urged now, and I believe for several good Reasons. The Sheriff in that Case had made a double Return, and the Sheriff might do it for his own Indemnity, for it was no more than finding a special Verdict; and therefore the Saying, *falso & malitiose*, being put to a Thing that was in itself right, it would not alter the Nature of the Thing. Another Reason they went upon was, they said this double Return was a void Return, and for that Reason the Action did not lie; and upon these Reasons depended that Judgment. That Gentleman who said that only four or five Lords dissented, is under a great Mistake; four or five Lords only I believe entered their Dissent, but there was a great Number, and near an Equality against that Judgment; and divers Lords now in that House were against that Judgment, that did not enter their Dissent.

Then, Sir, there is the Case of *Nevill* and *Strode*; and that was first a Judgment in the Common-Pleas, and when it had taken its Progress in *Westminster-Hall*, it came before the House of Lords; and the Lords returned it back again to *Westminster-Hall*, and ordered all the Judges of *England* to deliver their Opinion in it. That was founded upon an Ordinance of those Times, *Berkshire* was to send five Knights, and *Nevill* was one of them that were elected, but not returned: There they said, in that Case that Ordinance was intirely new, and that Case did not recommend itself by the known Laws of the Land, and for that Reason they would not give Judgment, for Wages could not be levied for five such Knights. And when afterwards they were to give Judgment, the right Constitution had recovered itself.

Now, as to the Lords Right to receive a Writ of Error in this Case: You have addressed to them that they would receive a Writ of Error at a Time when your Privileges were invaded. That was the Case of my Lord *Hollis*, who with others was informed against, 5 *Car.* for having spoke Words in this House that did affect the Government: And he pleaded to the Jurisdiction of the Court (Is there any such Thing here? No, they have submitted to it); and the Court over-ruled their Plea to the Jurisdiction, and that Judgment continued in Force (as some others which have been since do now, which it were well if they were reversed), 'till this House took Notice of it; and in 1667, they desired a Conference with the House of Lords. The Chairman was my Lord Chief-Justice *Vaughan*, and this House there complained how they were grieved by that Judgment; and after repeated Conferences, both Houses did consent to this Expedient, That my Lord *Hollis* being the only Survivor, should be desired to bring a Writ of Error in the House of Lords; and he did so, and the Lords in that Case did you Justice, and reversed the Judgment.

As to your passing this Vote, what it will signify, I cannot tell. What signified a Vote you passed before about the Year Eighty, That the putting the Laws in Execution against Protestant Dissenters, was an Injury to the Publick, and a Subversion to the Government; and that those that put them in Execution should be looked upon as Enemies to the King and Kingdom? The Consequence was, That all the Laws against Popery were put in Execution against Protestants more than they were before. The Judges in *Westminster Hall* said, This Vote had not passed into a Law, and they could not take Notice of it. I hope we shall do nothing that will lessen ourselves, nor any Thing but what will be effectual for the Ends for which 'tis proposed.

Sir *Joseph Jekyll* (afterwards Master of the *Rolls*). Mr. *Freeman*, I consider you have been a long Time in this Debate, and a great deal of it has been spent, either in Suggestions contrary to what appears before you, or else in Questions altogether improper for the Consideration of the Committee; and therefore it is necessary to look back to that which gave Occasion to the present Dispute.

The Committee hath a Copy of the Proceedings of this Action referred to them, but it hath not been read; and I am confident, if it had, and had been attended to by Gentlemen, they would scarce have said that the Lords, in the Judgment they gave, did any Thing in Opposition to your Judgment, or in Derogation of your Privileges.

Before the Action was brought, there was a Resolution of the House of Commons, That the Right of Election for the Borough of *Aylesbury*, was in the Inhabitants not receiving Alms. 'Tis from that Resolution the Plaintiff hath taken his Rise, and has brought his Action; for by this Declaration he makes his Case to be, that he was an Inhabitant of that Borough, not receiving Alms; and that the Constables falsely and maliciously obstructed and hindered him from giving his Vote at the Election there. The Constables plead, *Not Guilty*; and the Matter goes to a Jury, and they find for the Plaintiff, and give him five Pounds Damages: Which is in effect a finding that the Plaintiff was an Inhabitant, not receiving Alms, and that he was obstructed and hindered from Voting by those Constables, and that was done *falso & malitiose*, and to his Damage. And this may serve to demonstrate, that the Proceeding at Law has not been in Opposition, but in Conformity to your Judgment.

Now let us consider, whether the bringing of this Action is a Violation of your Privileges? A great many things have been said not proper for you to deliberate upon; one, that this will encourage a Multitude of Suits; another, that this Action was never brought before; and several other Matters which go to the Question, whether the Action will lie. Now that is not the Question here; but the true and only Question before you is, Whether this Action was brought in violation of your Privileges? for if there be no Breach of Privilege in it, I know of no Authority we have to stop the Course of legal Proceedings.

And as to that, but one thing (as I conceive) has been said materially, which is this, That this is a Parliamentary Case, and appertains to your Jurisdiction; and the Judges of the Common Law are not Judges of the Law of Parliament, and therefore they ought not to have given the Plaintiff his Judgment (and it must be admitted the Lords ought not to have given any Judgment but what the Judges ought to have given). To maintain this, it hath been said, and undoubtedly it is true, that this House hath a Right to judge of Elections; and it is as true, that in order to come to that Determination, it is incidently necessary that the House do judge of the Right of the Electors; and it has been said, (but that I deny) that the Right of the Electors is by the Law of Parliament.

I take the Right of every Elector in *England* to accrue to him by the Common Law, for he is under one or other of these Qualifications:

Either

Either he is a Freeholder, and then he has a Right to vote for Knights of the Shire; or he has a Right by Charter, or a Right by Preſcription; which two laſt Rights take in the Right of voting in all Cities and Boroughs. Now I would be glad to know, whether the Right of a Freeholder is not by the Common Law? Is it not an Eſtate, with all its Privileges and Services, created by that Law? Whether a Right by Charter is not by the Common Law? Is it not that Law that enables the Crown to grant Charters, and qualifies that Power? Whether a Right by Preſcription is not by the Common Law? Is not Preſcription, Common Uſage? And is the Common Law any Thing but Common Uſage? So that the Right of every Elector being by the Common Law, the Judgment of that Right is primarily and originally in the Courts of Law. The Freeholders Right of voting, is of the Eſſence of his Freehold; and you may as well take away his Freehold, as take away his Right to vote, which he has by Virtue of that Freehold, and then tell him he muſt come to the Houſe of Commons to recover it. And the ſame may be ſaid of thoſe ſeveral Intereſts which give a Right of voting in Cities and Boroughs. And thus I hope I have made it out, that a Right of voting is not a Parliamentary Right, but an ordinary legal one, and the Common Law. Judges have the Judgment of it originally; and it is incidently only that the Houſe has a Power of judging of it, and that too according to the Rules of the Common Law; which is a further Demonſtration that it is a Common-Law Right; for it would be abſurd to ſay, a Man has a Right by one Law, which is to be judged by the Rules of another.

Then what Courſe has the Plaintiff taken? He has a Right by the Common Law to chuſe Burgeſſes for *Ayleſbury:* That Right has been invaded, and he has gone to the Common Law for Redreſs, and from no other Power could he have it; for this Houſe, or the Committee of Elections, cannot give a Remedy in this Caſe, that is, cannot make the Perſon injured Reparation for the Damages done him, by obſtructing him in the Exerciſe of his Privilege: And that is the Thing the learned Gentlemen, who have ſpoke in this Debate, have paſſed by; and theſe are the material Points, that this is a Right at Common Law, and this Houſe cannot apply a Remedy.

But it has been ſaid, That the Houſe will examine, not only on Behalf of the elected Perſon, but of the Electors. 'Tis true, but in order to what? To ſee whether you have a right Member here, and for no other End; for I challenge any Gentleman to ſhew me one Inſtance of a ſingle Man who came hither and complained, That he had a Right to vote, and was hindered from voting, and made that ſolely to be the Offence of the Officer. Did the Houſe, or would the Houſe ever receive ſuch a Complaint? And yet he may go with that Complaint to the Law, for whether the Perſon he would vote for be returned or not, the Injury is the hindering him from enjoying his Privilege: And it cannot be made an Injury, or not an Injury by Matter *ex poſt facto*, that is, by the Officer's returning, or not returning the Candidates. And tho' the Officer ſhould repent him, and not carry his Injuſtice ſo far as to make a falſe Return, yet it is of Uſe, that the Law will redreſs the Wrong done to the Voter, and thereby, perhaps, ſtop the firſt Steps or Approaches towards a falſe Return.

But if I ſhould admit the Houſe would receive the ſingle Petition of a Voter, who was refuſed, and when the Perſon he would have voted for was returned, yet the Houſe cannot make him Reparation; all we can do, is to cenſure the Officer, but we cannot make the Perſon complaining whole, in Point of Damages. Indeed it has been ſaid, the Houſe can give Damages, and there was an Inſtance given of Mr. *Tankred*, who complained againſt a Clergyman, and the Houſe ordered Mr. *Tankred* to pay him Coſts: So was Sir *George Meggot* ordered to pay Coſts to the Member he cauſeleſsly petitioned againſt *, and the like is provided for at the Beginning of every Seſſion. But are theſe Inſtances of any Petitioner repaired in Damages by this Houſe? No, theſe are Inſtances againſt Petitioners, not in Favour of them; nor are Damages given in thoſe Caſes, but Coſts; all that is provided for is, that Perſons frivolouſly complained againſt ſhall not be out of Pocket. And by a Mean you have a Juriſdiction in Point of Expences, but not in Point of Damages, for you may order the Wrong-doer into Cuſtody, and make his Payment of Coſts to the injured Perſon the Price of his Liberty; but there is no direct Remedy even for Coſts.

But it is apprehended, here may be a claſhing of Juriſdictions, and if the Party ſhould be allowed to go to Law, the Courts of Law may be of one Opinion, and this Houſe of another. This is a Suppoſition the Law does not allow of, for this is to ſuppoſe Courts of Juſtice will not do Right. It will be allowed to me your Determination will always be juſt, and other Courts the Law ſuppoſes will do right too, and then they will determine as you do; and your Determination, and that of the Law, as I ſaid before, has been the ſame in this Caſe. But then, as the Suppoſition of Law is, that all Courts will do right, ſo human Frailty ſuppoſes there may be an Error in Judgment: And yet Courts muſt have Juriſdiction, or elſe there can be no Adminiſtration of Juſtice among Men, ſince there is no Judicature ſhort of another World that can pretend to an unerring Judgment.

And now I will ſhew you where ſeveral Courts have different Juriſdictions of the ſame Fact, and the Law allows them, notwithſtanding there may be Diverſity of Judgments. The Court of *Common-Pleas* may puniſh a Perſon for aſſaulting an Officer in the Execution of their Proceſs, as a Contempt to that Court; but at the ſame Time, for the ſame Matter, the Offender may be puniſhed in the *King's-Bench*, as it is a Breach of the Publick Peace; and the Officer may, if he pleaſes, bring his Action in the Court of *Exchequer* for the Damage done him.

I would obſerve a little upon the Caſes cited, and that as ſhort as poſſible. The firſt is that of *Nevill* and *Strode*; I have looked into the Journal of 1659, and the only Book of our Law where that Caſe is reported, and that is *Siderfin*'s ſecond Reports; and that was upon Writs iſſued out by *Cromwell*, whereby he appointed Counties to chuſe differently, ſome Three, ſome Four, ſome Five Members: Mr. *Nevill*, who was a Member of the Long Parliament, ſtood for one of the Five Knights for the County of *Berks*; they choſe him, but he was not returned, and therefore he brought his Action in the *Common-Pleas:* That Action depended there ſome Time, and thereupon the Juſtices brought the Record into this Houſe for Difficulty, and deſired the Houſe would come to a Determination in it, (and by the Way there was no Houſe of Lords in being at that Time; for it was in the Time of the Long Parliament, who had uſurped the whole Legiſlative, as well as the Executive Power) and no wonder the Judges complimented them with the Determination of that Queſtion, ſince they were their Creatures, and had their Commiſſions from them. Well, but the Record being brought in, the Houſe appointed a Day to conſider of the Matter, and when they ſaw the Plaintiff had proceeded according to the known Methods of Law, they gave no Judgment in it, but ſent it back to *Weſtminſter-Hall*, and there it was again argued, but never adjudged. And that there was no Judgment given, is eaſy to account for, if the Judges thought ſuch an Action would lie; for, at that Time, the Long Parliament was upon the Point of bringing in the King, and reſtoring the Laws: And if they had given Judgment for the Plaintiff, they had given a Sanction to the higheſt Uſurpation of the Protector, and all his wild Fancies of changing the Conſtitution at his Will and Pleaſure. And indeed the Plaintiff had diſaffirmed the Authority of the Long Parliament, which he had with great Zeal aſſerted, and of which he was himſelf a Member. But if the Judges had thought ſuch an Action would not lie, they might, without any Scruple, have given Judgment for the Defendant. And this ſeems to me a ſtrong Authority that *Weſtminſter-Hall* thought ſuch an Action would lie: And it is very remarkable, that when that Houſe of Commons (as they called themſelves) had uſurped the exorbitant Power I mentioned before, they did not proceed to aſſume the Juriſdiction of the Common Law.

The next Caſe is that of *Soame* and *Barnardiſton*, in which *Weſtminſter-Hall* was divided: My Lord *Hale* was of one Opinion, and my Lord *North* of another, and there were Six and Six of a Side, and the Matter came by Writ of Error into the Houſe of Lords, and a Gentleman ſaid, 800*l.* was worth contending for. But I am apt to think Sir *Samuel Barnardiſton* did not hope to recover one Farthing of the Money, for *Soame* was dead, and I believe without Aſſets: For, in all the Proceedings in the Houſe of Lords, none appeared on the Behalf of his Widow, ſhe had no Counſel there; but it was argued againſt Sir *Samuel Barnardiſton*, by Mr. *Montague*, the late Lord Chief-Baron, to vindicate the Proceedings of the Exchequer-Chamber, and Judgment was given, as hath been ſaid, in the Houſe of Lords.

But what happened next? The Commons were ſo uneaſy under that Judgment, and the Injury which might be done to the People from whom they derived their Authority, by double, or falſe Returns, that the next Thing was the Interpoſition of the Legiſlature to apply a Remedy, and the Lords came into it, though it was a great Diſcredit to the Reverſal of that Judgment; for the Act of the 7th of the late King, declares falſe Returns to be againſt Law, and provides an Action ſhall lie where an Officer makes a Return falſly and maliciouſly; they never thought it an inſnaring Thing, but knew Malice might be tried in that, as well as in many other Caſes: And I wonder to hear *falſo & malitioſe* ſhould be ſo much Words of Courſe. Men are tried for their Lives every Day, where Malice is the main Point in Iſſue. If a Man does without any Provocation kill another, the Law intends Malice, and that is Murder: So here, if an Officer refuſeth the Vote of one, who hath a clear and indiſputable Right, the Law preſumes it done maliciouſly; but if the Officer refuſes a Man's Vote, and there is any probable Cauſe or Colour to do it, or his Right of voting is doubtful, the Judge will tell the Jury they ought to find for the Defendant; and therefore it is only in a plain and glaring Caſe that a Man can prevail in ſuch an Action. And this, by the way, is an Anſwer to that Objection, that ſuch Actions as theſe will bring all your Elections to be determined by the Lords: Since an Officer can never be found guilty by a Jury upon this Action, where there is a Controverſy or Diſpute, much leſs can the Lords try or determine any thing of the Right.

There is another Caſe, and that is the Caſe of Mr. *Onſlow* againſt the Bailiff of *Haſelmere*; that Judgment was againſt the Action, and was given by my Lord Chief-Juſtice *North*, and the reſt of the Judges of the *Common-Pleas*, upon the Authority of the Judgment in the Caſe of *Soame* and *Barnardiſton* in the Exchequer-Chamber; and no wonder they would not give a Judgment contrary to what ſome of themſelves had given in another Place.

Sir, this Queſtion hath been before this Houſe not long ſince, Whether a Candidate ſhould be hindered from proceeding upon an Action at Law before he had come to this Houſe for their Determination, whether he was choſen or no? And this Houſe, upon a ſolemn Debate, adjudged, that he might go to Law before he had come hither; and I deſire your Clerk may read a Word or two in your Journal, 'tis *Monday*, *March* 13, 98.

Clerk reads. " The Houſe being acquainted, that *John Buller*, Eſq.

* The CASE of Sir *George Meggot*. 23 *Nov.* 8 *Willielmi R.* A Complaint being made to the Houſe, That Sir *George Meggot* had proſecuted at Law ſeveral Perſons for what they had teſtified the laſt Seſſions at the Committee of Privileges and Elections, upon hearing the Matter touching the Election for the Borough of *Southwark*; it was referred to the Committee of Privileges to examine the Matter of the ſaid Complaint, and report their Opinion.

4 *Dec.* 8 *Willielmi.* A Report was made of the Matter of Fact, and that the Committee had come to this Reſolution, " That Sir *George Meggot* having proſecuted at " Law, *Thomas Malyn* and *John Ladd*, for what they teſtified at the Committee of Privileges and Elections the laſt Seſſion, upon hearing of the Matter touching the Elec- " tion for the Borough of *Southwark*, was guilty of a Breach of Privilege."

The Houſe then agreed with the Committee, and ordered Sir *George Meggot* to be taken into Cuſtody of the Serjeant at Arms.

The CASE of Mr. *Tankred*. 20 *Jan.* 9 *Willielmi R.* Mr. *Tankred* complained to the Houſe of a Breach of Privilege againſt Mr. *Edward Morris*, Miniſter of *Aldborough*, in the County of *York*; for that the ſaid *Morris* had intercepted Letters of Mr. *Tankred*'s, which were ſent by the Poſt.

14 *Feb.* 10 *Willielmi R.* Mr. *Morris* attending, was brought in, and the Houſe having heard him, and his Witneſſes, Reſolved, " That there was no Ground of Complaint " of Breach of Privilege, and ordered that Mr. *Morris* ſhould be diſcharged from any further Attendance, and that he ſhould be paid the Charge of his Attendance by Mr. " *Tankred*."

'who was Candidate at the Election for Choice of Members to serve 'in this present Parliament for the Borough of *Lescard* in the County 'of *Cornwal*, hath brought an Action upon the Statute made in the 7th 'Year of his Majesty's Reign, against Mr. *Richard Roberts*, Mayor of 'the said Borough, for the Sum of 500*l.* for making a false Return 'of *William Bridges*, Esq. although the said Mr. *Buller* never peti-'tioned against, or questioned the said Return in this House, and a De-'bate arising thereupon, resolved, That the Debate be adjourned till '*Wednesday* Morning next.'

Sir *Joseph Jekyll*. Now I desire you to look upon *Wednesday* the 15th Day of *March*, when that Debate was resumed.

Clerk reads. This was the 15th of *March*. 'The House resumed the 'adjourn'd Debate relating to Mr. *Buller*; and after a long Debate, 'the same fell, without any thing done thereupon.'

Members. Well, what then?

Sir *Joseph Jekyll*. I take this to be a plain Authority, that will govern the Case before you; for if it was not reasonable to restrain a Man from proceeding at Law upon the Statute, before he had come hither for a Determination, when it was to controvert the very Election, which was undoubtedly proper for the Judicature of the House, much less will it be reasonable to restrain a Proceeding at Law, which is not to controvert the Election, and upon a Case not proper for the Judicature of the House; and the House doing nothing upon that Complaint, is a Declaration, that the House could not justly do any thing upon it: For if a Man makes a Motion in any other Court, and the Court declares they will do nothing upon it, I desire to know whether that be not a Declaration of that Court, That the Motion is unreasonable, and it is all the Judgment the Court gives in such a Case. And I had the Honour to sit in Parliament when that Motion was made, and very much pressed; and some that have spoke in this Debate were then of an Opinion contrary to what they are now, and were not for stopping the Course of Law.

Sir, I apprehend the Action is well founded in this Case; this Man had a Right to vote, he had an Injury done him in respect to that Right, he hath sought to be repair'd in a proper Way, and he could not be repair'd in any other: I am for doing nothing to his Prejudice, and therefore am against your Question.

Mr. *Harley* (*Speaker*). Sir, I shall trouble you but with a few Words after this long Debate: And rather to understand the Terms you are debating on, than to think any Thing I can offer to be of any great Weight. But I take the Question not to be as some have represented it, but to be singly this in general, Whether an Action does lie at Common Law in the Case before you?

There is no need to mention the particular Circumstances of *Aylesbury* Election, for if that was the single Case, you might have taken another Method. I will not insist, that in this very Election a great Number of those Inhabitants petitioned this House upon this Point, That their Votes were deny'd: And after this Petition had lain in the House some Time, it was withdrawn by their own Consent: I do not trouble myself whether this particular Man was amongst them, nor will I trouble you with what may reasonably be urged from this, but leave that to other Gentlemen.

But I desire we may understand the Terms upon which we are debating; we have had Maxims of the Common Law, and the Rights of Parliament mention'd. The Common Law is the Common Usage of the Realm; I take the Laws of Parliament to be the Common Law of the Land, and the Usage of Parliament to be the Law of Parliament; and the Law of Parliament is to be known by Usage, as the Common Law is.

Then how shall we know whether this belongs to the Common Law? If there be any other Way, I should be glad to be inform'd; but I think there is no other Way of knowing whether an Action will lie at Common Law, but by Reason or Usage, and Precedents. Now, if by Reason, it is to be made out by what necessarily attends this Case, or some other Cases like it. And pray what do they offer, that lies at Common Law? Do they give you any Precedent? What Reason do they offer? I suppose that which was read last is no Precedent in this Case, for that was an Action upon the Statute; or that the Courts below take upon them a Legislature instead of a Judicature, which must be, if there be no Rule for them to go by. I take the Question you have read to consist of Two Parts; one asserting your own Right; the other is negative, That no other Courts have any Right, but in Cases particularly directed by the Statute.

I cannot think this of Electors and Elected a Privilege; I take it to be a Service both in the Electors and Elected; and formerly it was reckon'd an hard Service; I know not how they find it now. 'Tis a Service, I take it, because all who are Electors are liable to pay the Wages, and I take that to be a Burden: And not only from that, but the very Towns that were Boroughs, and elected, when one paid Fifteenths, the other paid Tenths; so that I take it to be a Service: And if a Franchise, see the Consequence, it will be in the Power of the Crown to create as many Boroughs as they please.

Then consider, this House is in Possession of this Power, as of Right; and I do not find the Common Law in Possession of any such Right. Then what do they offer to bring it in, but that there would be some Failure of Justice? Now I took it, That the Judges are *Jus dicere*, and not *Jus dare*: If any thing want a Provision to be made for it, it must be done by the Legislative Power; and if the Electors want it, Provision must be made for them, that they shall have an Action. And those Gentlemen who think that necessary, may bring in a Bill to that Purpose, and take the Sense of the Legislature upon it in a regular Way.

The Question before you now is, Whether the Examination, Hearing, and Determination of all Matters relating to Elections, where some Statutes have not particularly directed otherwise, does not belong to this House? There was a famous Case of *Goodwin*, that was a Case contested by the Crown, and the Crown pretended to send out another Writ. And there they say, That as to Members of Parliament, their Attendance, &c. they are the sole Judge. And this they lay before King *James* in the first Year of his Reign, and claim it as their sol Right, and the King's second Writ was determin'd to be void.

But a Gentleman makes an Argument, if one should strike another in the House, what Remedy? Why there is an Act made for that Case in *Henry* VI's Time.

I think now the Matter will turn upon this: Say they, 'tis true you can try Elections, and who are the Electors; but here is one Thing remains, that is, to give Satisfaction. Have they any Precedents for this? I believe the Precedents are without; they have a Power for what is necessary, nothing less than a Law can give the other.

Gentlemen say, there may be a Difference in Judgment in Courts below, but they are subordinate, and there lies an Appeal: But in this Case, all Courts will be co-ordinate with you; and therefore, if that be a Grievance, nay a Solecism in Government, prevent it now.

'Tis said, What will your Vote do? That is pretty odd: If they would have an Act of Parliament, your Vote must be the Ground of it.

You are Judges of the whole; but say some, you can't give the pecuniary Satisfaction. Well, suppose so; but you can restore all to their Right. But let me say this, If you would not set up a co-ordinate Power with you in Matters of Elections, and which will be too hard for you at last, I hope it will be a Warning to you, to take more Care in the judging of your Elections for the time to come.

If the Judgment belongs to you, and you are possess'd of it for so long a Tract of Time, that nobody can offer any Thing against it since *H.* IV.'s Time; 'till Gentlemen shew me some Reason, why the Common Law should lay hold of it, I must be of Opinion that it does belong to you, and no Court can take Cognizance of it but you, except where 'tis otherwise provided for by Statute.

Sir *Thomas Meres*. Sir, I shall not enter into a Discourse, and repeat what I remember of former Times; I will say but this, let others answer it better if they can: As to the Words *falso & malitiose*, it seems, one Chief-Justice said, They were Words of Importance, and must be prov'd: Another Chief-Justice said, They were only Words of Course, that is, like Pepper and Vinegar to a Slice of roast Beef; so there is one Chief-Justice, that spoke last but one, against another.

As to making Satisfaction, I confess, I like very well what that Gentleman said on the right hand. If there was any Precedent for it, I agree it would do very well, that this House could give Damages, and we will make the best of it; but most of these Things have Spite in them, and these Actions are brought with Spite. Now this we can do, we can punish the Officer, and there is Revenge in that, and that is a sweet Bit, and some Satisfaction. What further occurs to me hath been spoken by other Gentlemen, better than I can do it; and I shall not repeat it, being so late in the Night.

Mr. *Cowper* (afterwards Earl *Cowper*). I perfectly agree with that honourable and learned Gentleman that spoke last but one in this Debate, in what he laid down as an undoubted Maxim, or Ground-work, for the Opinion he deliver'd, That the Law and Custom of Parliament is Part of the Law of the Land, and as such, ought to be taken Notice of by all Persons. And I think 'tis the exact Standard by which we ought to walk; and the Deduction my poor Judgment is apt to make from that Principle, is this, that we ought not, out of Zeal to our own Jurisdiction, to go one Step farther than that known Law and Custom of Parliament will warrant us to do.

Now I take it upon this Debate, That this Law and Custom of Parliament doth not give the Subject, who is injur'd by his Vote being denied him, any Satisfaction or Recompence for that Damage: And am the rather confirm'd in that Opinion, because that very learned and honourable Gentleman, who is particularly knowing in the Laws and Precedents of Parliament, has not pleas'd to represent to you any one Precedent, where the Subject so injur'd hath complain'd to the Parliament, and had Redress in that Particular; but all Petitions have been either from the Candidates, or Electors, complaining of an undue Return. So that it cannot be shew'd, that it hath been the Law and Custom of Parliament to give that Remedy, or Relief in Parliament, which is the Subject-Matter, or End of Action now in question.

I go likewise along with him, and every Gentleman that hath spoke it in this Debate, That by the Law and Custom of Parliament, none but yourselves can determine who are rightly elected, in order to displace, or place them here; and incident to that End, you have the sole Right of considering the Right of the Electors; I say so far forth, as it is necessarily incident to determine who shall, and who shall not sit here; and no other Court can consider the Right of the Electors, in order to determine the Right of any to sit in this Place, further than you by some Act of Parliament have given them Leave. But this Matter having now been disputed a great while, you have had it fully represented to you, how they came to hold the Scales in this Action in *Westminster-Hall*, not as in a Case where the Right of Election, or the Privileges of this House was a Subject-Matter of the Question; the Action was brought there only to intitle the injur'd Subject to Damages. And this Matter ought to be consider'd, as it relates to different Ends and Purposes, and upon that it turn'd in the Case of *Soame* and *Barnardiston*. They who thought that Action lay, thought the Courts below might try the Merits of an Election to repair in Damages, not to determine who should be admitted to sit in Parliament.

And I will venture to say, That the Judgment of the House of Lords that confirm'd that Reversal, was in no wise at that Time satisfactory to the Commons of *England*.

But the Act of Parliament that hath been mention'd, was built upon this, that the Reversal of the Judgment between *Barnardiston* and *Soame* was not right, and so that Act was procur'd to set up the Right of the Commons of *England*, that was thought to be invaded by that Reversal, or Judgment, that the Action upon the Case did not lie.

I will go a Step farther, That as you have the sole Power to try the Right of Election, and consider the Right of the Electors, to the End I mention'd, to determine who shall be admitted here; so I grant it hath been the Law and Custom of Parliaments (how antient I will not enquire) to punish the Offenders, particularly the Officers and Magistrates presiding at the Election, for doing any Wrong or Injury in his

Office on that Occaſion, in order to make him an Example, or as an Offender againſt the Publick, and the Conſtitution of Parliament: So far I grant you have a juſt Right to go, and nobody ought to interfere with you.

But now we are carrying the Matter yet further: The Queſtion now is not, Whether we have the ſole Right to puniſh the Officer as a publick Offender? This Action is not brought to that End, nor is there a Word in the Declaration, who was, or was not duly elected, or that the Conſtitution or Privilege of Parliament was violated: But the Plaintiff only ſays, he had a Right to vote, and that he was injuriouſly denied it, (whether the right or wrong Member was return'd, he meddles not with it) and he ſubmits it to the Court and the Law, Whether he ought not to have Damages for that Wrong? And the Queſtion now is, Whether that Demand of Damages was not well founded? Or, Whether there is any thing in this contrary to the Law and Conſtitution of Parliament? Law depending on Cuſtom, certainly conſiſts not in, and is not to be made out by one Act, but by often reiterated Acts: And that muſt be very far from being the Law and Cuſtom of Parliament, which is ſo far from being a frequent Repetition of Acts, or Precedents, that in this Caſe, there is not one Inſtance where an Elector hath brought his Petition, without regard to the Return made, and deſired his particular Right to vote might be tried and aſſerted, he having been obſtructed and injured in giving his Vote; nor was ever ſuch Elector repair'd in Damages here, nor ever had his particular Right to vote reſolv'd, or aſſerted by any Judgment, or Declaration of this Houſe.

The learned and honourable Perſon, upon whoſe Reaſoning I am humbly offering my Thoughts, with great Deference, was pleaſed to inſtance in the Caſe of Five Perſons in the Town of *Aylesbury*, who exhibited a Petition, and complain'd of an Injury done them at an Election for that Town, at which their Votes were refus'd. And if they complain'd of nothing further, and did not conclude to the Right of the Return, and complain that they were unduly repreſented, I admit it had been ſo far an Inſtance to his Purpoſe. But if they had ſo complain'd only of the Injury done the Petitioners in denying their Votes; yet he is pleaſed to tell you, this Petition was withdrawn, and by the Conſent of the Perſons who preſented it, and ſo came to nothing. I ſuppoſe this is the ſingle Precedent to prove the Law and Cuſtom of Parliament, becauſe there is no other Inſtance given. It does not appear upon what Ground or Reaſons it was withdrawn; and I having no particular Memory of that Paſſage, you will pardon me, if I am miſtaken in my Conjecture. I believe no Man, that ſeeks a Remedy would deſiſt, if he expected to ſucceed; ſo I take the moſt probable Reaſon ('till another appear) to be, that they were hopeleſs of doing any good with it: And one Petition not proſecuted, will hardly ſhew, that Parliaments uſed to give Redreſs in ſuch Caſes. Now if that Precedent had been ſucceſsful, if the Petition had been referred to a Committee, if Damages had been given upon the Complaint, and a declarative Vote had paſs'd to aſſert the Petitioners Right, (but I did not obſerve there were any ſuch Proceedings) then, indeed, I muſt admit, that it was one Precedent in Point, and a very material one; and it would have proved, That we had once held Plea of this Matter, and by conſequence, if we had often done ſo, that nobody elſe had to do with it. But if that Precedent be defective, and none can ſhew that ever any Petition was exhibited by any Elector for a perſonal Injury done him in rejecting his Vote, tho' the Perſon he would have voted for was return'd, this Action may lie for ſuch an Injury done to an Elector, without interfering with any Law, or Uſage of Parliament, that hath yet been made evident; and that brings me to another Matter of that honourable Perſon's Diſcourſe, and I acknowledge he enter'd into it with a great deal of Candour and Fairneſs.

He was pleaſed to ſay, He thought it was admitted in this Debate, That the like Action is not to be found in all the Reports, or Books of Law. I would allow his Objection its due Weight, and admit what I take his Meaning to be, That this Action, in the particular Species of it, may be new, tho' 'tis old in its Genus, or the principal Materials on which it is built; and I take it, if by the general Rule, or Reaſon of Law for ſuch an Action it be warranted, this Action (as a Thouſand other Actions on the Caſe may) will lie, tho' in all the Parts 'tis not to be exactly parallel'd; for it is the very Nature of, and imply'd in the Name of an Action upon the Caſe, that every Man may maintain it on his particular Caſe, provided it carry in it the general Reaſon, or Ingredients required by Law to ſupport ſuch an Action, tho' in many Circumſtances it may be perfectly new. I ſee that honourable Perſon underſtands clearly the neceſſary Incidents of that Action; that is, there are to be *damnum & injuria*, which I take to mean a Damage to the Subject, not ariſing from a lawful, but which is the Conſequence of an unlawful Act. Now, ſays he, firſt, here is no Damage, becauſe antiently the Attendance was thought a Service and a Burden, and the Right of Electing was a Service too, and in being deprived of a Service, there can be no Damage; and therefore one of the main Ingredients of an Action of the Caſe is wanting. This is clear Reaſoning, and either to be anſwer'd or ſubmitted to.

It is ſaid, The Right of Electing was a Service; how true, I doubt upon the Reaſon of the Thing: A Service was often a part of the Tenure, by which a Man held his Land 'till it came up to the Crown; and the Service was originally created by Grant and Reſervation. Now, can any one imagine, that where one holds a ſmall Freehold, any ſuch Tenure was created between him and his immediate Lord originally by Reſervation, as that he ſhould vote to ſend Members to Parliament?

But if it might be conſider'd as a Service ſo created, it will not do the Buſineſs of the Argument, unleſs you conſider it alſo as a Service of Burden, without Advantage or Privilege; for if it be a Privilege too, (tho' in its Creation it might be a Service) then the depriving a Man of it is an Injury. Now nobody can think but that the Right to elect a Parliament-Man, which is a diſtinguiſhing Character from the Vulgar, and hath its Weight in the Legiſlature, is a Privilege; and therefore to be deprived of it, is to be deprived not only of a Service and Burden, but of a very valuable Privilege: And I believe any *Engliſhman* would think we dealt hardly by him, to deprive him of it, tho' we ſhould tell him, at the ſame Time, we depriv'd him only of a Service or Burden, and not of a valuable Privilege.

There is another Thing that occurs on this Head: We have been ſo far from thinking the being elected a Service or Burden only, that in the Nature of a Repeal of thoſe Judgments of *Soame* and *Barnardiſton*, by a poſitive Law we have given the Elected double Damages if he be deprived of that Service. Therefore by our own Notion, and in our own Caſe, 'tis a Privilege that ought to be recompenſed even with double Damages, that is to ſay, when it concerns ourſelves. And ſhall we declare it a mere Service in the Caſe of our Electors, not to be recompenſed even by ſingle Damages, and that after the undoubted Methods of the Common Law have adjudged it their Due? For I do not find any body doubts, whether this Man has proceeded in the legal Method throughout, even in the laſt Reſort. The Lords have not judged the Fact, they are bound as to the Fact by the Verdict, and they are unqueſtionably the Judges of the Law on a Writ of Error. And therefore, as to what hath been ſaid, That any Fact of an Election might come to be determined before the Lords, it is a great Miſtake, for they judge purely of the Law on Writs of Error, as every one knows, that knows any thing of our Conſtitution. Give me Leave to ſay, We, upon this Occaſion, judge of this Matter only as a Matter of Law, which may affect our Privileges; and tho' we have Authority to conſider what is Law, as it relates to, or may intrench upon our Privileges, nobody that ſits here can think that there lies an Appeal in this Place, or a ſecond Conſideration of this Matter after the Lords Judgment, as 'tis a Point of Law only, and as it regards the Right of the Subject. So that an Objection in Point of Law here to the Judgment of the Lords, will not hold otherwiſe than as it relates to our own Privileges; for nobody will ſay, That we are the dernier Reſort in any other Reſpect. And tho' that is the only Point that brings it properly under our Conſideration, yet I fear we are taking from the Subject, in Effect, what the Law hath adjudged his Right, and reverſing a legal Judgment given in the Subject's Favour. There are other Arguments flung in, to make up the Weight only, as that which compares the preſent to the Caſe of a Dove-houſe; in which Caſe, in regard of the Multitude of Actions that would follow, an Action will not lie for every one that is injured by the erecting of it. It is true, where a Multitude are injured by one and the ſame Fact, it ſhall not be puniſh'd by a Multitude of Actions; but the Public is to take Care of it, becauſe the Injury is of a publick Nature. But by the ſame Standard and known Laws of *England*, if one Man is ſo raſh as to commit a Multitude of Injuries, which ſeverally affect ſeveral Perſons, it was never ſaid, that he became unpuniſhable by the Multitude of his Offences, but every one injured has his Action againſt him. I have heard it ſaid, *defendit Numerus*; but that is ſpoken as to the Number of Offenders, not the Number of Offences committed by the ſame Man. And theſe Injuries which conſiſt in denying the Subject to vote, when of Right he ought, will not be multiply'd (as is objected) by letting the Subject know, That as they may come into Parliament to puniſh the Officer as a publick Offender againſt the Conſtitution; ſo the particular Perſon injur'd, by being denied his Vote, may alſo have an Action for the private and particular Injury done to him only.

I would mention one Thing more: They who have ſpoke for the other Opinion, ſeem to take it for granted, (which I do not take to be a true Way of Reaſoning) that becauſe in determining who have a Right to ſit here, we do incidently, and only can, in order to that End, determine who have a Right to vote, therefore no other Judicature can try the ſame Matter or Right to vote, tho' it be to different Ends and Purpoſes.

Now if you will conſider the different Juriſdictions in the Conſtitution of this Kingdom, there is nothing more common, and many Inſtances may be given of it. There are Variety of Juriſdictions that try the ſame Fact, and yet each hath a ſole and ſeparate Juriſdiction in that Matter, to different Ends; and theſe Juriſdictions are not, in that Reſpect, ſubordinate to one another: Take the Spiritual and Temporal; the Spiritual is not ſubordinate, but only reſtrainable by the Temporal, where they intrench upon the Temporal; as in the common Inſtance of Matrimony, which directly and abſtracted from other Purpoſes, is triable in the Spiritual Court, and no where elſe: But yet if that comes to be a Queſtion of Fact in relation to a Title at Law, or to make out a Deſcent, why the Temporal Courts every Day try it, though *per ſe*, and taken by itſelf, it belongs to the Juriſdiction of the Spiritual Court; and yet theſe Courts are not in that reſpect ſubordinate one to another.

So in the Caſe touched upon of a Battery, 'tis not triable in the Common Pleas, as 'tis an Offence againſt the publick Peace, by Indictment, in order to a Fine, but triable in thoſe Courts only that have a Criminal Juriſdiction; but as 'tis a private Injury, and in order to recompenſe the injur'd in Damages, that is triable in the Court of Common Pleas, and other Places, which have Cognizance of Civil Actions only: And this is not in reſpect that one Court is ſubordinate to the other, but one holds Plea of the ſame Fact, in order to one End; and the other in order to another End: And there is no claſhing of Juriſdictions in ſuch Caſes.

For what hath been objected, That this may create Variety of Judgments concerning the ſame Right: This does not weigh, it ſeems, in our own Caſes, for we may bring our Actions for double Damages for a falſe Return, and yet that may produce the ſame Variety of Judgments. So was the Opinion of the Houſe in the Caſe behind me cited; and the Law is plain, That though the laſt Determination of this Houſe, where there hath been any, ſhall determine the Right of Election, and there the Judges and Jury ſhall be bound by the laſt Determination, and to act by the ſame Rule; yet in Towns where there has been no Diſpute of the Right ſettled here one Way or other, the Candidate may notwithſtanding bring his Action, and he, or the People of the Place, may alſo petition the Houſe of Commons. And then there is the ſame Objection, for there may be Variety of Judgments touching the Right of Election, one in the Houſe of Commons, and another

another in the Courts below. And upon the Trial, in order to obtain Damages, a Jury, in such Cases, where the Right had never been settled in Parliament before the Election in Question, are not directed by the Judgment of your House on the same disputed Election, nor is any Jury bound to follow such Judgment. And if you will go upon a Supposition, that a Judge and Jury may go contrary to Law and Right, or the Determinations of this House in the Case before you, 'tis an Objection which you have over-looked in your own Cases; and therefore why should it be an Objection to hinder the Person whom you represent, of his Remedy for the Injury done him?

Upon the Whole, I am for so much of your Question as serves only to declare, That you have the sole Power of determining the Right of all Elections, and even the Electors Right to vote, to the End to try who is your Member, or to punish the Officer, as an Offender against the Constitution: so far is agreeable to the constant Law and Practice of Parliament. But for that Part of the Question which relates to the restraining the Electors from bringing their Actions for the personal, or private Damage done to them, I think it is not agreeable to the Law or Constitution of Parliament.

Sir *Humphrey Mackworth*. Mr. *Freeman*, we are much obliged to the Gentlemen that have argued on both Sides, who have brought the Matter of this Debate into a narrow Compass: The Question is this, "Whether an Elector be intituled to an Action at Common Law against the "Officer for Recovery of Damages, in case his Vote, which he offered, be "not taken down in Writing, and entered on the Poll? or, Whether "the House of Commons have the sole Privilege of examining and determining the Right, or Qualification of every Elector to give his "Vote, and to judge of the Behaviour of every Sheriff, and other "Officer, in taking the Poll on the Election of Members to serve in Parliament?"

I am of Opinion, with great Submission to better Judgments, that the House of Commons have a sole Right of Judicature in these Cases, and that the Elector is not intitled to an Action at Common Law. I shall endeavour to support this Opinion, by answering the Arguments that have been made use of to prove the contrary: And first, I crave Leave to observe, That the Gentlemen who have argued on the other Side, have not taken Notice of a Distinction which seems to be very material in this Case, and that is, between an actual Force, or Violence done by the Officer, and a bare Omission in Point of Duty. It is agreed, that in case the Officer does by Force, or Violence, obstruct or hinder an Elector from offering, or pronouncing his Vote at an Election for which of the Candidates he pleases, the Elector will be intituled to an Action at Common Law for Recovery of Damages; for that is a Personal Wrong, and does not concern the Right or Qualification of an Elector to vote in Elections: But in case the Officer does permit the Elector quietly to offer, or pronounce his Vote, (as he did in the Case of *Ashby*, who pronounced his Vote for Sir *Thomas Lee* and *Simon Mayne*, Esq.) but does not think fit to enter his Vote upon the Poll, the Elector in this Case is not intituled to an Action at Common Law for Recovery of Damages, because he has neither suffered any Force or Violence, nor is by such Omission deprived of his Vote: For a Vote being once pronounced, the Law takes it for the Benefit of the Public, tho' the Officer be wanting in his Duty; and none have Power to determine, whether the Elector had a legal Vote, and whether the Officer had sufficient Reason to refuse to enter the said Vote on the Poll, but the House of Commons. If any others should have Authority in this Case, they will be able to destroy the Freedom of Elections, and the Constitution of Parliament.

It is insisted by some Gentlemen, that the Electors have no proper Remedy in this Case in the House of Commons, and therefore they must have their Remedy at Common Law: But with great Deference to their Judgments, the Electors have a very proper Remedy in this House in every respect; for here their Votes will be allowed, the legal Representatives restored, and the Officer will be punished for any wilful Default in the Execution of his Office. This is a Remedy that answers the End for which every Elector is intituled to give his Vote, which is not for a private Advantage to himself, but for the general Advantage of the whole Kingdom. But the Action at Law is no proper Remedy in any respect: For since a Vote that is offered and refused, is as good by the Law of Parliament as a Vote that is offered and received, and is so adjudged on the Trial of every Election in the House of Commons, or else they could not fill their House with legal Representatives; it is not proper or reasonable that an Officer should pay Damages to an Elector that has not suffered any, nor that a publick Offence should be punished by a private Satisfaction; which is not likely to prevent the Evil, preserve the Vote, and restore the Representative; nor is the same consistent with the Constitution, or the publick Safety.

The Qualification of Electors, and the Behaviour of Officers in all Elections, are Matters of Parliament, and such Matters are not cognizable elsewhere, as hath been often declared by all the Judges of *England*: A Parliamentary Case requires a Parliamentary Remedy. And since Votes have been refused in all Elections; if Electors, in this Case, had been intituled to an Action at Law, it must be presumed, that some Time or other, such an Action would have been brought, which yet was never once attempted in any former Reign; and all those Acts of Parliament that were made to give Damages in Cases relating to Elections, do demonstrate that no such Damages could be recovered at Common Law; for if they could, there had been no Occasion for making any of those Statutes.

It is insisted, That every Right must have a Remedy; but then the Subject must be first deprived of that Right, which in this Case he was not; and even when he is, he must have his Remedy in a proper Manner, and in a proper Court. There are several Sorts of Rights, and several Sorts of Laws in *England*, and there are several Courts of Justice, for the Administration of those Laws: A Man that has a Right to a Legacy, cannot bring an Action at Common Law, but he has a proper Remedy in the Spiritual Court. The like may be observed of Cases that belong to the Courts of Chancery, Admiralty, Stanneries, and of the Forest-Laws. The Subject cannot bring Actions at Common Law, in Cases that belong to the Jurisdiction of other Courts. And when my Lord Chief Justice *Coke* enumerates the several Laws in this Kingdom, he gives the Precedence to the Law and Custom of Parliament, which, he tells us, is superior to the Common Law in *Westminster-Hall*. And as every Court at Law has its Customs and Privileges peculiar to itself, and is sole Judge of them, so also the High Court of Parliament, *suis propriis legibus & consuetudinibus subsistit*, hath its own proper Laws and Customs, and is sole Judge thereof. And if an Action at Common Law will not lie for a Legacy, where the Spiritual Court has a Jurisdiction, tho' the Temporal Courts have, in many Respects, a superior Authority; such an Action will much less lie in a Case concerning the Parliament, which is the highest Court of the Kingdom, and who are sole Judges of all Cases relating to themselves: But some carry this further, and say, that every Right must have a Remedy with Damages. This may be true in most Cases, where a Man is deprived of Rights of Property and Possession; but there are many Instances to be given, where a Right of Franchise or Privilege is not intitled to any Damage; as a Person elected Mayor of a Corporation, if the proper Officer refuses to swear him, has no Action at Law for Damages, but his Remedy is by a *Mandamus* out of the *Queen's-Bench*: There is a Remedy by *Quare impedit*, but not to recover Damages. In a Writ of Right, you shall recover the Land, but no Damages: So in this Case, the proper Remedy is to have the Vote allowed, which can only be done by the House of Commons. Some Gentlemen have found out a new Distinction, which I never heard before, that the House of Commons have the sole Privilege to judge of the Rights of Electors, and of the Behaviour of Officers, to one Intent, but not to another; that is, in order to determine who are the legal Representatives, but not to give Damages to the Party injured. But, with great Submission, there is no Weight at all in this Distinction. For, as it is plain, that the Elector is not, in this Case, deprived of his Vote, and therefore suffers no Damage; so it is also evident, that the Judgment of the House of Commons, in Matters properly cognizable before them, cannot be contradicted by any other Judicature; and therefore their Judgment of the Qualification of the Elector, and of the Behaviour of the Officer, must be conclusive to all Intents and Purposes whatsoever. It is contrary to the Reason of all Laws, that the Behaviour of an Officer should be subject to the Determination of two independent Jurisdictions: Or that he should be innocent by the Judgment of a superior Court, and guilty by the Judgment of an inferior: Or that he should be twice punished for the same Offence. No Man can serve two Masters: The Officer, at this Rate, will be every way ensnared, and made liable to Punishment, whether he does his Duty or not: If he accepts illegal Votes on the Poll, he will forfeit 500*l.* by the Statute, for a false Return; if he refuses them, he may be ruined by a Multitude of Actions: for if one may bring an Action, there may five Hundred; since every Man, at this Rate, may offer a Vote, and bring an Action for not entering it upon the Poll. How is this consistent with the Freedom of Elections, in which there ought to be no Terror, neither on the Electors, nor on the Officers? But as the Electors should be free to offer their Votes, so the Officers should be free to judge whether they ought to be entered on the Poll, or not; and they ought not to be accountable to any, but the House of Commons, whose Servants they are, in all Matters relating to Elections, and who are entrusted with the Determination of all Matters and Cases relating thereto; and they may as well punish them for taking illegal Votes on the Poll, as for not taking those that are legal. In neither of which Cases have the Judges of the Common Law any Jurisdiction, tho' there is the same Reason in both, to take Care that every the meanest Subject may have Relief for any Injury done him; but we are not to take more Care of the meanest Subject than of the whole House of Commons. The greatest Subject in *England* ought to have no Relief but what is consistent with the Law of Parliament, and the Safety of the Constitution. If an Action lies, and upon a Judgment on that Action a Writ of Error lies in the House of Peers, the Lords will be the sole Judges at last, who have Votes to chuse a House of Commons; which is directly contrary to the fundamental Maxim of the Law and Custom of Parliament, that the two Houses are mutual Checks to each other, and sole Judges of their own Privileges.

This is an excellent Constitution, and admirably well contrived for the common Safety: But how can this Constitution be preserved, if the Lords can punish our Officers, and govern our Elections? This will be the Way to destroy all Checks, and to make the House of Commons dependent on the Lords; and then I cannot see upon what Foundation you can be said to sit here to do any Service for your Country.

Others insist, That this is a Right that is incident to the Freehold and Freedom of Electors; therefore, as their Freeholds are cognizable at Common Law, so is every Incident belonging to it. This Argument is plausible at first Sight; but, in Reality, there is nothing in it: For tho' the Commons of *England* have submitted their private Differences to Arbitrators, or Judges, indifferently chosen and appointed by the Prince, the common Parent of the People; yet they have never submitted their fundamental Rights and Privileges, which they hold in their publick and politick Capacities, as a free Branch of the High Court of Parliament, to any other but their own Representatives, who are chosen and appointed by themselves. This is not a Case, properly speaking, between Party and Party, but between the Lords and Commons, because the Determination of this Case brings the whole Right in Question, Who have a Privilege to judge of the Qualification of Electors to give their Votes in Election of Members to serve in Parliament, Whether the Lords or the Commons? It is not now the Question, Who hath the best Right to a Freehold, or Freedom, or to any thing that is incident to it? But, Whether the Commons of *England* shall have any Freeholds, or Freedoms at all? Or, which is the same Thing in effect, Whether they shall have any Security for those Rights or not? For if the Lords are Judges of your Privileges, you can hold no Right but during their Pleasure.

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The Lords ſeem to contend for the Right of the Subject, but I wiſh it is not for a Power to enable themſelves to judge and determine as they think fit of all our Rights and Liberties; for this is the neceſſary Conſequence of allowing an Elector to have a Remedy in any other Place but within theſe Walls.

This is my humble Opinion; and if I am miſtaken, other Gentlemen will ſet me right. This is certainly a Matter of the higheſt Importance to the Welfare of the Subject, and I doubt not but they will very well conſider it, before they give way to the eſtabliſhing a Precedent that tends to deſtroy the Privileges of this Houſe, or the Liberties of their Country.

A great Tenderneſs is expreſs'd for this poor Man, whoſe Vote has been refus'd; but whether he had a Right to give his Vote, is very much queſtioned, and never yet determined by this Houſe, which has the proper Judicature thereof. But admitting he had a Vote, Whether ought to be preferr'd a private Intereſt, or the publick Safety? Whether will be moſt for the Honour of this Houſe, and the Intereſt of our Electors, The Care of a private Perſon by new-invented Action, neither warranted by Reaſon, Precedent, or any eſtabliſh'd Law; or the Care of the Parliament, and the Conſtitution, on which depend the Rights and Liberties of all the Commons of *England?*

Sir, I beg Pardon for taking up ſo much of your Time, but I muſt confeſs it ſeems to me, that our *All* depends upon a right Determination of this Matter; for I cannot ſee any other Reaſon why this new Device is ſupported by the Lords, but only to render you precarious and uſeleſs.

Sir *Gilbert Dolben* (afterwards a Judge in *Ireland*). Mr. *Freeman*, I ſhall not trouble you very long at this time of Day: I think the Point in Debate has been truly ſtated by the Gentlemen who have inſiſted on this Queſtion, "Whether an Action will lie for an Elector, for having been "refus'd his Vote at the Election of a Member to ſerve in Parliament?" A learned Gentleman would have the Queſtion to be, not "Whether an "Action will lie; but, Whether this Houſe has the ſole Right of deter-"mining that Matter, and of giving Remedy in it?" I confeſs I think it is more properly ſtated the other way: But the thing is ſcarce worth a Diſpute, ſince which way ſoever you turn the Tables, it comes to the ſame Point, and one of the Queſtions will in conſequence be reſolv'd by the Reſolution of the other: For if that Queſtion be put which is propos'd by the Gentleman, and carried in the Affirmative, That this Houſe has the ſole Right of determining this, and all other Matters whatſoever that concern the Right of Election; then it muſt follow, that whoever is wrong'd in any ſuch reſpect, cannot be redreſs'd by Action, ſince the Right of determining in Caſes of this Nature, is not in the Courts below, but ſolely in this Houſe.

I ſhall not offer you any Arguments to prove this ſole Right, many having been urg'd by others; but I will conſider ſome Things (without taking up much of your Time) that have been offer'd as Objections to it.

Some Gentlemen have made a Diſtinction in this Caſe, between the Right of the Electors, and of the Elected; and they will have it, That the Courts below may decide the firſt, but not the laſt: Whereas, in my poor Opinion, the Deciſion of the Electors Right muſt neceſſarily in many Caſes decide who has Right to be elected. For ſuppoſe a common Caſe, That one of the Candidates inſiſts upon an Election by a ſelect Number, and the other upon a popular Election: If in this Caſe one of the Populace be refus'd his Vote, upon a Pretence that he is not of the ſelect Number, whereupon he brings his Action againſt the Officer; will not the Event of that Trial determine (in conſequence) the Right of the Candidates? Surely it muſt; ſince, if it go for the Plaintiff, he for whom the Plaintiff offer'd to vote, and who had the popular Intereſt, will appear to have had the Right of Election; and ſo will the other Candidate, if it go for the Defendant. Several other Caſes to the ſame Purpoſe might be put: So that if an Action of this Nature ſhould lie, it muſt (as I apprehend) unavoidably follow, That *Weſtminſter-Hall* by original Action, and by Writ of Error the Houſe of Lords, will have Power to determine, (at leaſt conſequentially) who has Right to ſit in this Houſe, and who not. And how conſiſtent ſuch a Determination will be with your undeniable Right (acknowledg'd on all Sides) of determining the Elections of your Members, excluſive of all other Juriſdictions, I leave to Gentlemen to conſider.

A learned Perſon was pleas'd to object, That Right is founded upon Uſage; and if this Houſe had the ſole Right of judging in a Caſe of this Nature, where a ſingle Elector is wrong'd, doubtleſs there would be ſome Precedent of Relief given to ſuch an injur'd Perſon. But (ſays the Gentleman) there is no ſuch Precedent, and therefore it muſt follow, That this Houſe has not the ſole Right of relieving in that Caſe. I think I may ſafely deny his firſt Propoſition, as he applies it to the Rights of this Houſe, which (generally ſpeaking) are not founded upon Uſage. Sir, the Rights of Parliament are chiefly founded upon the Nature and Conſtitution of Parliaments. Uſage is indeed a Corroboration, and an Evidence of thoſe Rights; but the Foundation of them is our being a Part of the Legiſlature, whereby we neceſſarily become inveſted with ſuch Rights and Privileges as enable us to act, and to diſcharge our Duty in that great Capacity: So that it is not ſo much what has been us'd, as what is neceſſary to the Support of our Conſtitution, that muſt be the Rule and Meaſure in determining the Rights of the Houſe of Commons.

But neither has Uſage been wanting in this Caſe: For whereas the Gentleman aſſerts, That there is no Precedent where this Houſe has given Relief to a wrong'd Elector, (with Submiſſion) ſeveral ſuch Precedents appear upon your Books, particularly in the Caſe of *Banbury*, where four or five of the Inhabitants complain'd, and the Houſe gave a Remedy. And I cannot ſee why, if it has been given to four, it may not be given to one; nay, I ſhould think, if more than one have been reliev'd, *a fortiori* one ſhould be relievable.

But it ſeems to me, that the Argument drawn from Uſage, goes much further than the learned Gentleman intended it ſhould; for if all Right be founded upon Uſage, all Right of Action muſt be ſo founded; and then what becomes of this Action, which the Gentleman has laboured to ſupport? If Uſage be nothing elſe but the Repetition of the like Acts, then this Action (according to the Gentleman's Rule, that Uſage is the Foundation of Right) cannot be rightful, unleſs there hath been a Repetition of the like Action.

Nor can it be ſaid, that this is the firſt Time any ſuch Cauſe of Action has ariſen, and that therefore it could not have been brought before; for there has ſcarce been a Parliament call'd in any Reign, but ſome or other has, without doubt, been wrongfully refus'd his Vote: So that the Cauſe having been frequent, it muſt have had the like Effect ere now, in Caſe ſuch a Wrong could have been redreſs'd by bringing ſuch an Action.

But no Gentleman has pretended to ſay, That any Action of this Nature was ever brought before; and therefore we may infer from the learned Gentleman's own Poſition, as likewiſe from the Authority of *Littleton*'s Text, That ſince none has been brought, none can be brought. And this has been the conſtant Opinion of the Courts in *Weſtminſter-Hall*, the Judges having, upon every Occaſion, where the Rights of Parliament have fallen under their Conſideration, in all Times declared, That nothing of that Kind is within their Juriſdiction: Nor can they judge of any ſuch Matter, farther than as they are impower'd by particular Statutes.

And this was the Reaſon why the Judgment in *Barnardiſton*'s Caſe, given in the *King's-Bench*, was revers'd in the Exchequer-Chamber, becauſe it was a Thing purely of Parliamentary Cognizance, the Houſe of Commons having the ſole Power of determining all Matters relating to Elections and Returns, except in Statute-Caſes. Nay, the Court of *King's-Bench* had declared, They would not have proceeded in that Action of *Barnardiſton*, had it not been grounded upon a precedent Judgment given in the Houſe of Commons. But the Judges in the Exchequer-Chamber thought, that even the Determination of the Houſe was not a ſufficient Authority to the Courts below, to hold Plea in an Action relating to the Rights of Parliament, tho' the Action was grounded upon that Determination; and therefore they revers'd the Judgment given in that Action: And (which is a mighty ſtrong Circumſtance in the Caſe) that Reverſal was afterwards affirm'd in the Houſe of Lords. So that it is plain, even the Lords themſelves were, at that Time, of the ſame Opinion with the Judges, That nothing which concern'd Elections was cognizable in *Weſtminſter-Hall:* For otherwiſe they could not have affirm'd the Judgment given in the Exchequer-Chamber, which was grounded intirely upon that Maxim.

This appears farther, by what their Lordſhips did in the Caſe of *Hollis* and *Elliot*, againſt whom Judgment had been given in the *King's-Bench* for what they had ſaid and done in this Houſe. In the Year 1667, the Houſe of Commons voted, That the Judgment given in the *King's-Bench* againſt thoſe Perſons was illegal, as being againſt the Privilege of Parliament. And this Vote was (as I remember) deliver'd to the Lords at a Conference, with a Deſire of their Concurrence to it: Accordingly, the Lords ſent a Meſſage, That they did concur. Nay, they were ſo zealous, as to deſire the Lord *Hollis* to bring a Writ of Error upon that Judgment; which was done, and the Judgment was revers'd. From whence it muſt be inferr'd, that their Lordſhips were then of opinion, whatever Judgment is againſt the Privilege of Parliament (that is, of either Houſe of Parliament) is an illegal Judgment.

Now to lay theſe two Opinions of the Lords together: If the Houſe of Commons has the ſole Privilege of judging all Matters relating to Elections (upon which Ground their Lordſhips affirm'd the Reverſal of the Judgment in *Barnardiſton*'s Caſe), and if every Judgment given againſt the Privilege of Parliament be illegal (as their Lordſhips both reſolv'd and judg'd in the Caſe of *Hollis* and *Elliot*), how comes it to paſs, that the Lords have lately thought fit to reverſe the Judgment given in this Caſe of *Aſhby* and *White*, which was grounded upon that very Opinion, eſtabliſh'd by their Lordſhips in the Caſe of *Barnardiſton*, That all Matters concerning Elections are determinable only in the Houſe of Commons? And conſequently, how can we avoid ſaying, (purſuant to the other Opinion, and to the Judgment they gave in the Caſe of *Hollis*) That their Lordſhips Judgment of Reverſal given upon the Writ of Error in *Aſhby*'s Caſe, being againſt what themſelves have own'd to be the Privilege of the Houſe of Commons, is an erroneous (not to ſay an illegal) Judgment?

I confeſs I cannot much wonder at its being ſo, when I conſider, that the Steps their Lordſhips made in proceeding to this Judgment of Reverſal, were ſo very haſty, as not to afford them ſufficient Time to weigh and to deliberate upon a Matter of ſuch Importance. This Cauſe had depended near a Twelvemonth in the *King's-Bench*, it had been argued ſeveral Times at the Bar, and at length *ſeriatim* by the Juſtices, Three of whom, upon the Reaſon of former Reſolutions, gave Judgment againſt the Plaintiff, that the Action does not lie: And yet, no ſooner was this Writ of Error brought, but the Errors are immediately argued; and upon the firſt Argument, the Opinions of the Judges are required; and notwithſtanding they deſired Time but 'till the next Day to conſider of the Caſe, the Lords (as I am very well aſſured) would not allow them an Hour, but obliged them to deliver their preſent Thoughts, which tho' ſeveral of them expreſſed very doubtfully, and ſeveral others were for affirming the Judgment; yet their Lordſhips were ſo very clear, and ſo determinate in the Point, that, without any farther Conſideration, the Judgment was revers'd.

And now I deſire Gentlemen to judge, whether in this Inſtance the Lords have ſhewn that Regard either to the Privileges, or to the Dignity of this Houſe, which their Anceſtors, and themſelves, had formerly expreſs'd upon the Occaſions before mention'd.

I will take Notice but of one Thing more, which fell from a learned Gentleman, who inſiſted, that the Election to Parliament is not a Service, but a Privilege, becauſe double Damages are given by the late Act concerning Returns. I have caſt my Eye upon that Act, and I think, if the Preamble be read, it will appear, that Gentleman was ſomewhat unfortunate in appealing to it; for the Preamble calls the Election to Parliament a Service, in expreſs Terms, and certainly with good Reaſon. If the Houſe will give me Leave, I'll read it.

"Whereas

" Whereas falſe and double Returns of Members to ſerve in Parliament " are an Abuſe of Truſt in a Matter of the greateſt Conſequence to the " Kingdom, and not only an Injury to the Perſons duly choſen, by keep- " ing them from their Service in the Houſe of Commons, and putting " them to great Expence to make their Elections appear, but alſo to the " Counties, Cities, Boroughs, and Cinque-Ports by which they are " choſen, and the Buſineſs of Parliament diſturb'd and delay'd thereby; " Be it therefore enacted——"

Sir, not to trouble you any longer, I am entirely for the Queſtion, as it is ſtated.

Mr. *King* (afterwards Lord *King*, and Lord Chancellor): That which calls me up, in the firſt Place, is what that honourable Gentleman juſt againſt me, was pleas'd to intimate, as if the Right of Electing was only a Service, and not a Liberty, or Privilege; and I find a worthy Member, that ſpoke laſt, is of the ſame Opinion. Truly, I am loth to tell you my own, without deſiring the Act 25 *Car.* II. 9 *cap.* may be read.—

Members. No, no.

Mr. *King.* 'Tis an Act to enable the County Palatine of *Durham* to ſend Members to Parliament; and it recites, That they had not, before that Time, had the Liberty and Privilege of electing and ſending any Members to Parliament: Where you ſee the Legiſlature call it a Liberty and Privilege; and if the Legiſlature call it ſo, I think I may venture to call it ſo too. And if it be a Liberty and Privilege, then the Queſtion will be, Whether it does not ſtand on the ſame Bottom with our Liberties and Privileges? In Caſe of any other Franchiſe or Liberty, an Action lies at Common Law for the Breach thereof; and why an Action ſhould not lie at Common Law for the Breach of this Franchiſe, as well as for the Breach of every other Franchiſe, is, to me, very ſtrange. Gentlemen take it for granted, this is purely an Action at Common Law, and no Statute hath any Influence on it. Now there is a Statute which hath not been mentioned, (only I muſt firſt premiſe that which, I think, no body will deny, *viz.* That wherever an Act of Parliament does forbid any Thing, if any body be injured by the doing of the Thing ſo prohibited by that Act, in conſequence of Law, the Perſon injur'd hath an Action) I ſay, there is a Statute that forbids Diſturbances or Hindrances in Matters of Elections; and by conſequence of Law, that Statute gives an Action to the Party injur'd, againſt the Perſon diſturbing or hindering him in his Election. The Statute I mean, is the 3 *E.* I. 5 *cap.* that is a poſitive Law whereby all Diſturbances in Elections are forbid: Every Man is forbid to hinder or diſturb by Force of Arms, by Malice, or menacing any Man, to make a free Election.

I ſhall only inſtance in one parallel Caſe, tho' I could in many more: The Statute in *Rich.* II's Time, *de Scandalis Magnatum*, only forbids the ſpeaking Evil of great Men; there is not one Word of an Action, yet, by Operation of Law, it was always held, that an Action would lie upon that Statute for a Scandal of a great Man, becauſe it was prohibited by that Statute. So here, the Statute forbids the diſturbing of any Man by Force or Malice to make free Election; the Jury have found, that the Defendants did, in this Cauſe, maliciouſly diſturb and hinder the Plaintiff from voting at the Election; and by a like Conſequence and Operation of Law, this Action is maintainable.

Gentlemen ſay, this is a new Action never heard of before: It is true, this particular Action was never brought before, but Actions of the ſame Kind and Nature, and grounded on the ſame Principles and Reaſons of Law, have been brought before. *Et ubi eadem eſt ratio idem jus.* I could give you many Inſtances of this Kind. Was it ever heard, 'till the 20th or 21ſt *Car.* II. that an Action lay againſt an Officer for denying a Poll to one who ſtood Candidate for a Bridge-maſter? The Mayor denied the Poll, and ſaid, he was Judge of the Election: And upon this, the Perſon injured brought his Action, and recover'd. At the ſame Time it was ſaid, there was no ſuch Action ever heard of before; 'tis true, not that Species, but the Genus was heard of. Another Action was brought 30 *Car.* II. (which was never heard of before) againſt a Mayor, for refuſing the Plaintiff's Vote for a ſucceeding Mayor.

I believe every body knows, that all the Law-Books for 400 Years, ſay, That the Reverſioner had Liberty to go into an Eſtate of a Tenant for Life, to ſee if he commit Waſte. And no Action was ever brought 'till 16 *Ja.* I. by a Reverſioner againſt a Tenant for Life, for refuſing to let him in to ſee whether Waſte was committed. No Action was ever brought againſt a Maſter of a Ship for the negligent Keeping and Loſs of Goods on board his Ship, 'till about the 24 *Car.* II. and yet the Action lay.

There was another Action in K. *Car.* Iſt's Time, brought for a falſe and malicious Proſecution of an Indictment of a Man for Treaſon. There was the ſame Objection; and it was ſaid, That this would deter People from proſecuting. And nobody ever dreamt of it before, 'tis true, but it ſtood upon the general Reaſon of the Law; if you do me a Wrong, I muſt have a Remedy. And as to what a worthy Gentleman hath ſaid, That there are inſtances at Common Law, where a Man ſhall recover and yet have no Damages; 'tis true in real Actions, but let him give me an Inſtance of that in an Action of the Caſe. He recovers nothing there; if he does not recover Damages in real Actions, he recovers the Land itſelf——

Members. The Queſtion, the Queſtion.

Mr. *King.* I find Gentlemen are very uneaſy, I will trouble you no further.

Members. Go on, go on.

Mr. *King.* I agree, the determining the Right of Election belongs to the Houſe of Commons; and they ought to apply to the Houſe of Commons in that Caſe: And I ſhall not depart from that, I think I can't, without ruining the Conſtitution; but that which I ſay is, That this Action does not at all relate to the Right of Election. This Action is brought by a Man that hath an undoubted Right of voting, againſt an Officer for maliciouſly refuſing his Vote. Put the Caſe this had happen'd in a County, (for the Law would have been the ſame) that a Freeholder, who had a Right to vote, had tendered his Vote to the Sheriff; and tho' he knew he was a Freeholder, yet the Sheriff ſhould maliciouſly refuſe his Vote: Hath the Sheriff done this Man an Injury or no? This Man does not bring his Action, becauſe the Perſon he would have voted for is not return'd, but 'tis becauſe there is an Injury done to his Franchiſe. If I thought the Right of Election was concern'd in this Caſe, I would go as far as any, for I think that does belong to the Houſe; but I don't think this is concern'd in the preſent Caſe.

Sir *Thomas Littleton.* I ſhall be ſhorter than ſome imagine. It has been diſcourſed, Whether this be a Privilege, or a Burden, &c. Let them think it a Burden that call it ſo: If it be a Burden, 'tis ſuch a Burden as ſome Men ſpend a great Part of their Eſtate for, as if it was a Privilege. I think this Reſolution which is propos'd, tends to the encouraging one Man to injure another Man's Franchiſe without any Reparation, which I believe is not very conſiſtent with Law, or Reaſon. You have, no doubt, a Power of puniſhing the Offenders, but you can't give Damages: I think this is a plain Caſe; here was a Man who had a Right to vote, and was not admitted.——

Members. No, no.

Sir *Thomas Littleton.* That is admitted upon the Judgment: For the Caſe is made upon the Right; and if he had not prov'd his Right, he could not have recover'd. Then if he was denied his Right, nobody will ſay, We can give him Damages. What would you have a poor Man do, come with a Petition, and fee Counſel, and attend the Parliament for a Month together? The Man it ſeems thought it better to go this way. I think, if he had complain'd, we might have puniſh'd the Officer; but for Damages, he could have them no way but this.

Suppoſe the Judges in *Weſtminſter-Hall* had been of Opinion, That this Action did lie, and the Conſtables had brought a Writ of Error; What would you have ſaid in a Caſe where a Man had been denied his Privilege of Voting, and the Law had given Damages, if the Lords had ſaid No, there ſhall be no Action? I think the Lords have done what is right, I think they have reliev'd the Perſon injur'd according to Juſtice; and it does not interfere with your Rights, for he founds his Action upon your Determination.

Members. No, no.

Mr. *Walpole.* Mr. *Freeman*, I deſire to have the Queſtion read.

Accordingly Mr. *Freeman* in the Chair read the Queſtion again.

Mr. Serj. *Hooper.* A Gentleman that ſpoke laſt but one, was pleas'd to ſay, That if he thought the Right of electing Members was any ways concern'd in this Queſtion, he would come heartily into it: I know not what that Gentleman means by it, but believe all future Elections will depend much upon the Determination you make now. If you give the Lords this Juriſdiction to take Cognizance of Matters relating to Elections, we muſt come to them to know whether we have a Right to ſit here. One Gentleman ſaid, he could not tell whether the ſitting here was a Burden, or a Privilege. I believe it is a Privilege to ſome, who by ſitting here obtain a good Place; but I think as to others, it may be looked upon as a great Burden, for to come up and ſpend a great deal of Money for the Publick Service; and all the Privilege that I know they have is, to protect their Eſtates, and ſerve their Country.

There is no extravagant Thing but may be brought into the Houſe of Lords, if you countenance them in the Juriſdiction they have now taken upon them. Any Action whatſoever, let it belong to any Temporal Juriſdiction, may be there determin'd. I will ſtill ſuppoſe, notwithſtanding what is objected againſt the Judges, they will do their Duty; but *Weſtminſter-Hall* is now no Barrier; for whatever is there determin'd, may be brought by Writ of Error into the Houſe of Lords, and they will determine it as they think fit. In the Caſe of *Soame* and *Barnardiſton*, the Law was taken to be, that *Weſtminſter-Hall* had not a Right to intermeddle in theſe Matters. What then hath ſince altered the Law, unleſs the Lords have the Legiſlative Power in them? And that I dare ſay they will have, if you allow them this.

This I muſt take Notice of from the Report now before you, that here is a Step made, which if it had been made in another Juriſdiction, I ſhould have given a hard Name to it.

I think, in the firſt Place, the Party ſhould be brought in by the Queen's Proceſs. When Errors are to be aſſign'd, there uſes to go out a *Scire Facias*, which is the Queen's Writ; but here is only an Order made, and for what? That the Party ſhall join Iſſue upon the Writ of Error. Suppoſe there had been a Releaſe of Errors, muſt he have join'd Iſſue upon the Errors? And yet it is here ſo ordered before the Party is heard. I ſay, if they have a Juriſdiction, the Party ought to be called in by *Scire Facias:* And no Judge, or Judicature can grant Execution, or Proceſs, but it muſt be in the Queen's Name. As for your Queſtion, I come heartily into it.

Sir *William Strickland.* Mr. *Freeman*, I think this Queſtion depends upon two Parts, and I believe it the beſt way to divide your Queſtion. One Part of it concerns the Rights and Liberties of this Houſe, and I think every body will come up to it: And as I would not leſſen the Privileges that belong to the Houſe of Commons, ſo I would not leſſen any Privilege of the Commons of *England*, whom we here repreſent. As one are the Privileges of this Houſe, ſo the other concerns the Liberties of the People of *England*, who cannot otherwiſe come to a Remedy when they are abuſed in this Manner. The Gentleman that called it a hard Service, if he would tell his Country ſo, I believe he might be excus'd, and they would ſend another in his Room.

Mr. *Walpole* (afterwards Sir *Robert*, and Chancellor of the *Exchequer*, and afterwards Earl of *Orford*). I will trouble you very little at this Time: I think the Point of Learning and Law hath been ſo well ſpoken to by thoſe learned Gentlemen that have been againſt the Queſtion, that if I was able, I ſhould ſay nothing more to that. But I think the Queſtion, as 'tis going to be put, is not right; for as the Queſtion ſtands, tho' I cannot give my Negative to one Part, I think 'tis impoſſible to give my Affirmative to the other. The Matter before you comes to this ſingle Queſtion, Whether you will encourage, and give a Power to an Officer, be he whom he will, to act arbitrarily, or rather chuſe, in ſuch a Caſe, to do ſomething in Favour of the Electors? I am ſure, if I deſire to be elected by thoſe that had the Right, I would never give the Officer an Authority to the Prejudice

of the Electors. Where you come to say, that the sole judging of the Qualification of the Electors belongs to the House of Commons only, those, I apprehend, are Words of too large Extent and ill Consequence. Suppose there was an Action brought upon the last Act of Parliament, for a false or double Return———

Mr. *Freeman*. There is an Exception in the Question as to that.

Mr. *Walpole*. I know there is; but suppose an Action is brought upon that Statute, the Officer may have proceeded with the greatest Impartiality, may have taken the Poll with the greatest Exactness and Justice, and there may appear to be an equal Number of Votes for each Candidate, whereupon he makes a double Return, and this brings it to be determined by the Committee of Elections, and they vote one of them duly elected. This Gentleman that had the Favour of the Committee, (though afterwards possibly it might be made appear, that by Bribery or Corruption, and at a great Expence, he procured himself to be elected) after you have voted him duly elected, he hath nothing to do but to try his Action, and see if he can make his double Damages amount to his Expences. The first Thing he is to do, is to produce the Vote of the House of Commons that declar'd him duly elected, contrary, perhaps, to the last Determination in Parliament, which, in every Place, is to be the Guide to the Returning Officer. But shall there then be given in Evidence no Qualification of the Electors? Nothing to prove, that the Persons admitted to vote were qualified according to such last Determination? Or shall that Vote of the House of Commons, that was intended only to bring him into this House, recover him 5 or 600 *l.* Damages? I take it to be so, as the Law stands. Now it ought to be seen who hath the greater Number of legal Votes, and whether duly qualified; and in that Case you must suffer the Matter again to be tried by the Court, and you do, in some Measure, make them Judges of the Qualifications of the Electors; if it were otherwise, they could not enquire into the Majority of legal Votes.

What happens in the Case of a Mayor, may be in the Case of a Sheriff: If a Mayor or a Constable may deny a Man his Vote that hath an uncontroverted Right in a Corporation, a Sheriff may refuse a Freeholder, and strike off enough to make a Majority for whom he pleases. You had once the Case before you, Whether a Sheriff could refuse a Scrutiny; and one or two Gentlemen would have given that Power to a Sheriff; but a learned Gentleman thought it a dangerous Question, and he desired to come to the Merits of the Election; and that was determined, and you voted the worthy Member duly elected, and thought it a dangerous Thing to determine, Whether the Officer had that Power one Way or another? I think that Part of the Question, which concerns the Qualification of the Electors, ought to be left out.

Mr. *Freeman*. I will read the Question. (*Which he did.*)

Marquis of *Hartington*. Sir, I think it is a constant Rule, where a Question is complicated, 'tis the Right of every Member, if he desire it, to have the Question divided, and I think it regular to do it by an Amendment; and therefore I second that worthy Gentleman, that you would leave out those Words that relate to the Qualification of the Electors.

Mr. Sol. Gen. My Lord is undoubtedly right in what he desires; That if there be any Words in the Question to which Gentlemen have a Dislike, that Question is not to be put; but only, Whether those Words shall stand Part of the Question: Therefore if those Words of the Qualification of the Electors do give Offence, it must be put, Whether they shall stand Part of the Question? But I hope at the same time Gentlemen will apprehend, that leaving out those Words, leaves out all that you have debated on.

Sir *Christopher Musgrave*. No doubt if any Question is complicated, Gentlemen do not know how to give an Affirmative or a Negative, and you must divide it: But I hope Gentlemen will consider the latter Part of the Question is the main Thing whereon you have debated; for if you do not assert that you have the Power of determining the Qualifications of the Electors, you give up the Right of the Commons of *England:* I do agree that the Question may be divided.

Mr. *Freeman*. That which is debated now, is, Whether these Words shall stand Part of the Question?———

Sir *Thomas Meres*. Sir, I think the Question ought to be divided.

Mr. *Freeman*. The Question, as I have it upon my Paper, is this:

"That according to the known Law and Usage of Parliament, neither the Qualification of any Elector, or the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of *England* in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament."

But some Gentlemen are for leaving out these Words, ["Neither the "Qualification of any Elector, or"] So that I must put a Question, Whether these Words shall stand Part of the Question?

Members. Aye, aye.

Then Mr. *Freeman* put the Question, and the Committee divided.

Teller for the Aye's, Mr. *Gulston*,	———	215
Teller for the No's, Mr. *Wylde*,	———	97

So it was carried, that those Words should stand Part of the Question.

And the main Question being put,

Resolved,

2. That according to the known Law and Usage of Parliament, neither the Qualification of any Elector, or the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of *England* in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament.

Resolved,

3. That the examining and determining the Qualification or Right of any Elector, or any Person elected to serve in Parliament, in any Court of Law, or elsewhere than before the Commons of *England* in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament, will expose all Mayors, Bailiffs, and other Officers, who are obliged to take the Poll, and make a Return thereupon, to Multiplicity of Actions, vexatious Suits, and unsupportable Expences, and will subject them to different and independent Jurisdictions, and inconsistent Determinations in the same Case, without Relief.

Resolved,

4. That *Matthew Ashby* having, in Contempt of the Jurisdiction of this House, commenced and prosecuted an Action at Common Law against *William White*, and others, the Constables of *Aylesbury*, for not receiving his Vote at an Election of Burgesses to serve in Parliament for the said Borough of *Aylesbury*, is guilty of a Breach of the Privilege of this House.

Resolved,

5. That whoever shall presume to commence or prosecute any Action, Indictment, or Information *at Common Law*, which shall bring the Right of Electors, or Persons elected to serve in Parliament, to the Determination of any other Jurisdiction than that of the House of Commons, except in Cases specially provided for by Act of Parliament, such Person and Persons, and all Attornies, Solicitors, Counsellors, Serjeants at Law, soliciting, prosecuting, or pleading in any such Case, are guilty of a high Breach of the Privilege of this House.

Ordered,

That the said Resolutions be fixed up on *Westminster-Hall Gate*, signed by the Clerk.

These Resolutions, with this (to wit,

Resolved,

1. That according to the known Laws and Usage of Parliament, it is the sole Right of the Commons of *England* in Parliament assembled, except in Cases otherwise provided for by Act of Parliament, to examine and determine all Matters relating to the Right of Elections of their own Members).

Before passed in the Committee, were reported to the House.

Mercurii, 26 *Januarii*, 1703.

Mr. *Freeman* reported the five Resolutions agreed to by the Committee; the first Resolution was not opposed, but after the second Resolution (*viz.*

That according to the known Law and Usage of Parliament, neither the Qualification of any Elector, or the Right of any Person elected, is cognizable or determinable elsewhere than before the Commons of *England* in Parliament assembled, except in such Cases as are specially provided for by Act of Parliament)

Was read the second time by the Clerk, the Question (according to Order) being proposed to agree with the Committee in that Resolution, the Marquis of *Hartington* stood up in his Place, and spoke to this Effect:

Marquis of *Hartington*. I do not expect the House will be of a different Opinion from the Committee; but I think it is my Duty, when I apprehend what you are doing will be of ill Consequence to the Constitution, to give my Dissent in every Step. I think it will be dangerous to the very Being of this House: If this Maxim had been allowed formerly, I think there would have been no Need of taking away of Charters, and of *Quo Warranto*'s; by the Influence of Officers they might have filled this House with what Members they had pleased, and then they could have voted themselves duly elected.

Sir *William Strickland*. Mr. Speaker, I cannot agree to this Resolution; I think it deprives the People of *England* of their Birth-right: For they who have Freeholds in any of your Counties, or Freedoms in any Corporation, have as much Right to vote in Elections to Parliament, as they have to their Estates. And if any Gentleman would subject them to such arbitrary Proceedings, that a Sheriff, or any other Officer, may deny them this Privilege, give me Liberty to say, I must be always against any such Thing; for though you can punish the Officer, you cannot give any satisfaction to him that receives the Injury.

Mr. *St. John*. Sir, I do not rise up to trouble you long, but to speak to one Point that was mentioned by a Noble Lord over the Way. I shall be as tender as any Man alive of doing any thing against the Liberty of the People; but I am for this, because I take it to be the greatest Security for their Liberty. The Noble Lord was pleased to take Notice, that in the Consequence the Crown would have a great Influence on those that are to return the Members of the House of Commons; and when they were in, they might vote for one another. I cannot think that the Liberties of the People of *England* are safer in any Hands below, or that the Influence of the Crown will be stronger here than in other Courts.

Marquis of *Hartington*. I think that Gentleman hath not answered what I said. I shall never have any Suspicion of any that sit in this House now; but when those that have no Right are returned, and make a Majority, I think it will not be safe.

Mr. *Ward*. I do not apprehend that Consequence from this Resolution, I think if it was so, this should have been offered before the first Resolution was passed, which hath passed in the House and Committee, *Nemine contradicente*; for you cannot determine the Right of any Members sitting here, without determining the Right of the Electors.

Mr. *Lowndes*. I cannot but think it will be harder to influence this House to get an ill Vote, than it will be in another Place: However, if I am a Freeholder; and have a Right to vote in a County, or a Freeman, and have a Right to vote in a Borough, by admitting Persons to vote that have no Right, it may be as much Prejudice to me, for that may make my Vote signify nothing: And there is as much Injury one Way as the other. If all the People of *England*, who have a Vote, should go together by the Ears in *Westminster-Hall*, and dispute there who has a Right to vote, and who not, I believe the Judges of the Common Law, and Noble Peers of the other House, would be glad, in a little time, to restore the Right where it is, it would breed so much Confusion. If Gentlemen are not satisfied already, they may easily be so, That there is no Defect of Power in this House, but they have a Power to do Justice in all Cases of Elections; and I hope every Body will take Care, not only to maintain the Rights of the People that sent them hither, but the Trust lodged in them, which they cannot depart from by the Rules of Justice.

Then the second, with the other three Resolutions passed in the Committee, was agreed to by the House without a Division, with this Amendment only, of leaving out [*at Common Law*] in the fifth Resolution.

But the House, though they voted *Ashby* guilty of a Breach of Privilege, in commencing and prosecuting the said Action, yet there having been no Declaration of the House in that Case before, they made no Order for taking him into Custody, as usual in Cases of Breach of Privilege.

Upon

Upon these Proceedings of the House of Commons, the House of Lords appointed a Committee, who drew up *The State of the Case upon the Writ of Error* in their House; which is as followeth:

The REPORT of the Lords Committees appointed to draw up The State of the Case upon the Writ of Error, *lately depending in the House of Peers: wherein* Matthew Ashby *was Plaintiff, and* William White, *and others, Defendants. With the Resolutions of the House of Peers, relating thereunto* *.

Ashby against *White, & al'* †.

THE Plaintiff in this Action declares, That the 26th of *December*, in the 12th Year of King *William* the Third, a Writ issued out of Chancery, directed to the Sheriff of *Bucks*, reciting, That the King had ordered a Parliament to be held at *Westminster*, on the 6th of *February* following: The Writ commanded the Sheriff to cause to be elected for the County, two Knights; for every City, two Citizens; and for every Borough, two Burgesses; which Writ was delivered to the Sheriff, who made a Precept in Writing, under the Seal of his Office, directed to the Constables of the Borough of *Aylesbury*, commanding them to cause two Burgesses of the said Borough to be elected, *&c.* which Precept was delivered to the Defendants, to whom it did belong to execute the same. By virtue of which Writ and Precept, the Burgesses of that Borough being summoned, did assemble before the Defendants, to elect two Burgesses; and they being so assembled, in order to make such Election, the Plaintiff being then a Burgess and Inhabitant of that Borough, being duly qualified to give his Vote at that Election, was there ready, and offered his Vote to the Defendants, for the Choice of Sir *Thomas Lee*, Bart. and *Simon Mayne*, Esq. and the Defendants were then required to receive and admit of his Vote. The Defendants being not ignorant of the Premisses, but contriving, and fraudulently and maliciously intending to damnify the Plaintiff, and to defeat him of that his Privilege, did hinder him from giving his Vote, and did refuse to permit him to give his Vote; so that the two Burgesses were elected without any Vote given by the Plaintiff, to his Damage, *&c.* Upon Not Guilty pleaded, the Cause went down to Trial, and a Verdict was given for the Plaintiff, and Five Pounds Damages, and also Costs.

It was moved in the Court of *King's-Bench*, in Arrest of Judgment, That this Action did not lie, and that Point was argued by Counsel, and afterwards by the Court.

The Lord Chief-Justice *Holt* was of Opinion, That Judgment in this Case ought to be given for the Plaintiff; but Mr. Justice *Powell*, Mr. Justice *Powis*, and Mr. Justice *Gold*, being of a different Opinion, Judgment was entered for the Defendants: Whereupon the Plaintiff brought a Writ of Error in Parliament; and the Cause being argued at the Bar of the House of Lords by Counsel, and ten of the Judges, who were present in the House, being heard, and the Matter fully debated by the Lords ‡, the House was of Opinion, That the Judgment given in the *King's-Bench* was erroneous, and that the Plaintiff had a good Cause of Action, and ought to have Judgment.

To maintain this Opinion, these three Positions were laid down:

I. That the Plaintiff, as a Burgess of this Borough, had a legal Right to give his Vote for the Election of Parliament Burgesses.

II. That, as a necessary Consequence thereof, and an Incident inseparable to that Right, he must have a Remedy to assert and maintain it.

III. That this is the proper Remedy which the Plaintiff hath pursued, being supported by the Grounds and Principles of the ancient Common Law of *England*.

To make good the first Position, That the Plaintiff has a legal Right to give his Vote at the Election of Burgesses for this Borough, it was said, That it is well known, the House of Commons consists of Knights, Citizens, and Burgesses.

The Knights of Shires represent all the Freeholders of the Counties. Anciently, every the least Freeholder had as much Right to give his Suffrage, as the greatest Owner of Lands in the County. This Right was a Part of his Freehold, and inherent in his Person by Reason thereof, and to which he had as good a Title as to receive the natural Profits of his Soil. This appears by the Statute of 8 *H.* VI. *cap.* 7. which recites the great Inconvenience which did arise in the Election of Knights of the Shires, by Men that were of small Substance, who pretended to have an equal Right with Knights and Esquires of the same County, therefore that Right was abridged, and confined only to such Freeholders as had Forty Shillings *per Annum*; but thereby it appears, that the Right which a Freeholder hath to vote in the Election for Knights of the Shire is an original and fundamental Right belonging to him as he is a Freeholder.

The second and third Sort of Men, which compose the great Representation of the People of *England*, are Citizens and Burgesses, who, though they differ in Name, yet are in Essence and Substance the same; for every City is a Borough, and, as such, sends Members to Parliament.

There are two Sorts of Boroughs, the one more ancient, the other more modern.

Of the first Sort are the most ancient Towns of *England*, whose Lands are held in Burgage, and by Reason thereof had the Right and Privilege annexed to their Estates, of sending Burgesses to Parliament.

The second Sort are those Cities and Boroughs that have a Right by Prescription, Time immemorial, or by Charter, within Time of Memory, to chuse Burgesses for the Parliament; both these are upon several Foundations, the one as belonging to their Burgages, the other as belonging to their Corporations; the first is a real Right belonging to their Houses and Lands, the other is a personal Right belonging to their Body Politick.

As for the first, it is sufficiently described in *Littleton*'s Tenures, *Sect.* 162, 163, 164. A Tenure in Burgage is a Tenure in Socage, and is called a Tenure in Burgage, because these are the most ancient Towns in *England*, and from thence came the Burgesses to Parliament, and they who have this Privilege, have it as belonging to their Estates or Possessions.

The other Right of chusing Parliament Burgesses is not annexed to any Freehold or Estate in Possession, but vested in the Corporation of the Place, and is created in this Manner, *viz.*

When a Town was incorporated, a Grant was, either then or after, made to the Body Politick, that they shall have two Burgesses for the Parliament, to be chosen either by all the Freemen and Inhabitants of the Place, or such a selected Number as is prescribed by the Charter.

The Inheritance of this Privilege is in the whole Corporation aggregate; but the Benefit, Possession, and Exercise is in the Persons of those who, by the Constitution of those Charters, are appointed to elect.

And in all Cases, where a Corporation hath such a Privilege, the Members thereof, in their private Capacity, have the Benefit and Enjoyment thereof, because the Corporation, as such, is not to be represented: For it is not necessary that it should have any Estate; but by being a Corporation, they have only a Capacity to have Estates. *Jones* 165. *Hyward & Fulcher*. For as the Citizens and Freemen of a Place are incorporated for the better Government of those of the Place, so is this Privilege of having Burgesses given for the Advantage of the particular Members thereof, whose Estates are to be bound by the Acts of their Representatives.

And therefore the Wages of Citizens and Burgesses were always levied, not upon the Estates or Goods of the Corporation, but upon the Goods and Estates of the Members thereof §.

It appears by other Instances, that it is usual and proper for Corporations to have Interests granted to them, which enure to the Advantage of the Members in their private Capacities. *Moore* 832. Sir *Thomas Waller versus Hanger*. The King granted to the Mayor and Citizens of *London*, That no Prisage be taken and paid for Wines of the Citizens and Freemen of *London*. This enures to the Benefit of every Citizen and Free-

* *Die Lunæ*, 27 *Martii*, 1704. It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the Report made from the Lords Committees appointed to draw up the State of the Case upon the Writ of Error, lately depending in this House, wherein *Matthew Ashby* was Plaintiff, and *William White*, and others, Defendants, and the Resolutions made this Day relating thereunto, shall be forthwith printed and published. *Matth. Johnson*, Cleric' Parliamentor'.

† *Salkeld*'s Reports, fol. 19. in Case.

‡ The CASE of *William White*, *Richard Talboys*, *William Bell*, and *Richard Heydon*, Constables of the Town of *Aylesbury*, in the County of *Bucks*, in the Year 1700. In a Writ of Error brought in the House of Lords by *Matthew Ashby*, upon a Judgment given for the Constables against him in the Court of *Queen's-Bench*, last *Michaelmas* Term, as drawn up by their Counsel, and presented to the House.

The Plaintiff *Ashby* being a poor, indigent Person, and coming to settle in *Aylesbury*, the Overseers of the Poor there warned him out of the Parish, unless he would give Security to save the Parish harmless, and to that Purpose complained to the next Justices of the Peace, to get an Order to remove him; whilst this Matter was in Controversy, the Election for Burgesses of Parliament came on, and the said *Ashby* offering himself to be polled, the Constables (now the Defendants) refused to receive him to poll, being (in their Opinions) no settled Inhabitant there, nor did he ever contribute to the Church or Poor, either before or since the Election. After the Election was over, the said *Ashby* brought his Action on the Case against the Constables, wherein he sets forth, that he had Right to vote for Burgesses there, and that at that Election he offered to poll for Sir *Thomas Lee* and Mr. *Mayne*, and that the Constables refused to receive his Poll, to his Damage of 200*l.*

The Constables pleaded Not Guilty, and thereupon a Trial was had at the Assizes at *Bucks*, and *Ashby* got a Verdict against them, and had Five Pounds Damages given.

Whereupon, according to the constant Course of that and all other Courts, it was moved in Arrest of Judgment in the *Queen's-Bench*, where the Action was brought, That notwithstanding the Verdict which only found the Fact, yet no such Action did by Law lie against the Defendants; and after several Arguments at the Bar, and at last at the Bench, Three Judges (against the Chief Justice) held, that the Action did not lie, and so Judgment was given for the Constables.

And now the Plaintiff *Ashby* hath brought a Writ of Error in Parliament.

The Defendants conceive the Judgment in the *Queen's-Bench* well warranted by Law.

1. No such Action hath ever been brought, notwithstanding the many Elections that have been controverted every new Parliament; whereby 'tis evident, that it hath been the constant Opinion of all Lawyers, and others, in all Ages, that such Action would not lie.

2. Several Acts of Parliament have been made to give Remedy by Actions in *Westminster-Hall*, in some particular Cases of Elections to Parliament, which shew there was no Remedy at Common Law in those Courts.

3. There never were but Three Actions upon the Case brought by Candidates for false Returns, viz. *Nevill*'s Case in the late Times, and Sir *Samuel Barnardiston*'s Case, and *Onslow*'s Case in the Time of King *Charles* the Second; in all which Cases the Defendants prevailed upon the Point of Law, viz. That such Action would not lie.

And if such Action does not lie for one elected, much less will it lie for an Elector.

4. To support every Action upon the Case, there must be Damage *in præsenti*, or a Possibility of Damage *in futuro*, which there cannot be in this Case, unless it be presumed, That, contrary to the Act of Parliament, the Plaintiff was to have Money for his Vote.

5. If there was *Damnum* (which there is not), yet it cannot be pretended there was *Injuria*; and *Damnum absque Injuria*, is not sufficient to support an Action upon the Case. As at the Common Law: If the lawful Patron presented his Clerk to the Bishop, and he refused to admit him, it is conceived, no Action upon the Case lay against the Bishop, but a *Quare Impedit*, in which at Common Law, no Damages were given, which is a much stronger Case than this.

6. This is not to be compared to other Cases, where the Party hath no Remedy elsewhere than in *Westminster-Hall*; for here the Plaintiff hath a proper Remedy by applying to the House of Commons; it being usual for Electors, who think themselves aggrieved by the Chief Magistrates in an Election, to petition the House of Commons, although the Election is not contested by the Candidates, and parliamentary Causes are to be determined in Parliament: And therefore,

7. 'Tis conceived, That since this Matter concerns the Election of Members to serve in Parliament, the Courts of *Westminster-Hall* being not empowered by any Act of Parliament in this Case, have no Cognizance of it; but the House of Commons have the Determination of it: And this Jurisdiction is confirmed to them by Parliament; for by the Act 7 and 8 *W.* III. *cap.* 7. If any Person shall return a Member to serve in Parliament, contrary to the last Determination in the House of Commons, of the Right of Election in such Place, the Return shall be adjudged a false Return: by which 'tis evident, that the Commons are the only Judges in all Matters where the Right of Election may come in question, as it must of Necessity do, in all Cases where the Question is, who are the Electors.

8. If this Action should prevail, the Chief Magistrates, in all Places where Elections are made, would be in a miserable Condition upon every new Parliament, by reason of a Multitude of Actions which probably would be brought against them upon all contested Elections, and by the different Judgments that possibly may be given in the House of Commons, and in *Westminster-Hall*, touching the same Election.

9. The laying it to be done *falso & malitiose* (which are grown to be almost Words of Course in Actions on the Case) cannot give a Jurisdiction where it was not before; and if those Words shall be sufficient by being annexed to a Man's Intention, almost all a Man's Actions may be brought into *Westminster-Hall* by those Words, and subjected to the Power of a Jury. *T. Powys*, *Con. Phipps*.

§ 46 *Ed.* III. *m.* 4. *dorso*, *&c.*

man,

man of *London* for his own Wines, in which the Corporation of the City hath no Intereſt.

But there is no ſuch Notion in the Law of *England* as a Right without a Remedy.

The ſame Thing appears by the Caſe of *Waller* and *Spateman*, 1 *Saund.* 343. and by the Caſe of *Meller* and *Walker*. Theſe Inſtances make it ſufficiently appear, that though the Inheritance of this Franchiſe be in the Body Corporate, yet it is for the Benefit of the particular Members thereof: And it is certainly a great Advantage for the Men or Inhabitants of a Place to chuſe Perſons to repreſent them in Parliament, who thereby will have an Opportunity, and be under an Obligation, to repreſent their Grievances, and advance their Profit.

Of this Opinion have two Parliaments been, as appears by two ſeveral Acts, the one 34 & 35 *H.* VIII. *cap.* 13. the other 25 *Car.* II. *cap.* 9. The firſt is an Act for making Knights and Burgeſſes within the County and City of *Cheſter*, which begins in this Manner, *In humble wiſe ſhew to your Majeſty, the Inhabitants of your Grace's County Palatine of* Cheſter, *That they being excluded and ſeparated from your High Court of Parliament to have any Burgeſſes within the ſaid Court, by Reaſon whereof, the Inhabitants have hitherto ſuſtained manifold Loſſes and Damages, as well in their Lands as Goods and Bodies*; therefore it was enacted, That they ſhould have Knights for the County, and Citizens for the City, of *Cheſter*. The other Act, which conſtitutes Knights and Burgeſſes for the County Palatine and City of *Durham* recites, *That the Inhabitants thereof hitherto had not that Liberty and Privilege of electing and ſending Knights and Burgeſſes to the High Court of Parliament.*

The Application of theſe Two Acts is very plain; the firſt ſaith, To be excluded from ſending Knights and Burgeſſes to Parliament, is *a Damage to Lands, Goods, and Body*: the other ſaith, That it is *a Liberty and Privilege* to ſend them.

Thus the Right of Election is explained, and ſhewed to be a legal Right.

That of electing Knights of Shires belonging to and inherent in the Freehold.

The other of electing Burgeſſes is belonging in ſome Cities and Towns to the real Eſtates of the Inhabitants; and in others, is veſted in the Corporation, for the Benefit of the particular Members, who are the Electors; the having of which is a great Benefit and Advantage to the People thereof, and will prevent great Loſs and Damage that otherwiſe would enſue.

II. It follows, That in conſequence of this Right or Privilege, the Poſſeſſors thereof muſt have a legal Remedy to aſſert and maintain it.

It was ſaid, That there are many Rights for which a Man has no Remedy by the Common Law, as in Caſe of a Legacy given, if it be not paid, the Party cannot bring an Action for it. This is very true, but not applicable to the preſent Purpoſe; for the Conſtitution of the *Engliſh* Government has wiſely diſtributed to ſeveral Courts the Determination of proper Cauſes, but has left no Subject, in any Caſe where he is injured, without his adequate Remedy, if he will go to the right Place for it. If a Man will ſeek for a Remedy at Common Law, for a Legacy, which by our Conſtitution is to be recovered in the Eccleſiaſtical Court, it is his own Fault if he do not recover, as it would be if he ſhould begin a Suit for Land in the Court of Admiralty, or go for Equity to the Common Pleas.

He who loſes or quits his Remedy loſes his Right: If a Man has a Bond for Payment of One Thouſand Pounds, he has no Remedy to recover this Money but by Action; therefore, if he releaſes all Actions, he loſes his Right to the Money, becauſe he has given away the Means to recover it, *Coke*'s 6th *Rep.* 58. *Bredman*'s Caſe. If a Man purchaſes an Advowſon, and at the next Avoidance ſuffers an Uſurpation, and brings not the *Quare Impedit* in Time, he hath loſt all manner of Remedy, and in conſequence his Right, to which neither he nor his Heirs can ever be reſtored.

Would it not look very ſtrange in a Conſtitution ſo formed, that the Commons of *England* have an undoubted Share in the Legiſlative Authority, which is to be exerciſed by their Repreſentatives choſen by themſelves, in which every Freeholder, of Forty Shillings *per Annum*, hath a Right to vote for the County, every Citizen for a City, and every Burgeſs for a Borough; that if the Sheriff, or other Officer, who is to cauſe the Election to be duly made, ſhall hinder or deprive any of thoſe Electors of his Right, the Perſon injured ſhall have no Remedy, though the Injury be done to ſuch a Right, upon the Security whereof the Lives, Liberty and Property of all the People of *England* ſo much depend?

That the Defendants, in this Caſe, by hindering the Plaintiff from voting, have done ill, cannot be denied; becauſe they have excluded one who has a Right from his Vote. Then, if the Law doth not allow an Action to the Party injured, it tolerates the Injury, which is abſurd to ſay is tolerable in any Government.

There was much Weight laid upon the Caſe of *Ford* and *Hoſkins*, 2 *Cro.* 388. *Mo.* 842. which is, that where, by the Cuſtom of the Manor, every Tenant for Life might name his Succeſſor for his Life, whom the Lord is to admit; if one be named, and the Lord refuſes to admit him, it was held, an Action on the Caſe would not lie, becauſe the *Nominee* had no Right without being admitted. But the Reaſon given for that Opinion ſhews it has no Relation to this Caſe, for the Plaintiff's Right of voting is veſted in him without any previous Admittance; therefore, though it ſhould be a Law that no Action will lie for not giving a Right, yet certainly an Action muſt lie for defrauding and injuring a Man to enjoy a Right that he hath.

When any Statute requires an Act to be done for the Benefit of another, or to forbear the doing of an Act, which may be to his Injury, though no Action be given in expreſs Terms by that Statute, for the Omiſſion or Commiſſion, the general Rule of Law in all ſuch Caſes is, That the Party injured ſhall have an Action, *Coke* 10. *Rep.* 75. The Caſe of the *Marſhalſea*, 12 *Rep.* 100. *Co. Mag. Car.* 118. This is a Maxim allowed and approved of in all Ages.

There is the ſame Reaſon where the Common Law gives a Right, or prohibits doing a Wrong: But in this Caſe, An Act of Parliament is not wanting, for the Statute of *Weſt.* 1. *cap.* 5. enacts, *That Elections ſhall be free*; if he who hath a Right to vote be hindered by him who is to take his Vote, or to manage the Election, that Election is not free, ſuch an Impediment is a manifeſt Violation of that Statute, as well as an Injury to the Party whoſe Vote is refuſed. This Statute of *Weſt.* 1. ſhews what Opinion the King and Parliament had of the great Conſequence it was to the whole Realm, That People ſhould have their Freedom in Choice; and though the Common Law was the ſame before, as appears even by the Statute itſelf, the Words whereof are, *Elections ought to be Free*; yet it was judged neceſſary to add the Sanction of an Act of Parliament thereunto; *The King commandeth upon great Forfeiture, That no Great Man, or other, by Force of Arms, or by Malice or Menaces, ſhall diſturb any to make Free Election.* The Defendants did not, by Force of Arms, drive the Plaintiff away from the Election, nor by Menaces deter him, but they did maliciouſly hinder him (ſo it is charged by the Plaintiff in the Declaration, and it is found by the Jury to be done by Fraud and Malice), and ſo the Defendants are Offenders within the very Words of the Statute of *Weſt.* 1. Where the Law is ſo clear as to the Right, and the Duty ſo ſtrictly enjoined by Act of Parliament to be obſerved, it ſeems a great Preſumption to make it but a light Thing.

It being apparent that the Plaintiff had a Right, and that the Defendants have done him Wrong, and that by Conſequence of Law he muſt have ſome Remedy to vindicate his Right, and to repair the Wrong,

III. The third thing to be ſhewn is, That the Remedy the Plaintiff purſued by bringing this Action is the proper Remedy allowed by the ancient Law of *England.*

This Action is that which is called in the Law an Action upon the Caſe; that is, founded upon the particular Caſe of the Party injured.

The Law in all Caſes of Wrong and Injury hath provided proper and adequate Remedies.

1. When a Man is injured in his Perſon, by being beaten or wounded, the Law gives him an Action of Treſpaſs, Aſſault and Battery; if by being impriſoned, an Action of falſe Impriſonment.

2. If his Goods be taken away, or Treſpaſs done unto his Houſe or Lands, an Action of Treſpaſs lies to repair him in Damages.

3. If a Man hath a Franchiſe, and is hindered in the Enjoyment thereof, the proper Remedy is by an Action upon the Caſe.

The Plaintiff in this Caſe hath a Privilege and a Franchiſe, and the Defendants have diſturbed him in the Enjoyment thereof, in the moſt eſſential Part, which is his Right of voting.

4. Where any Officer or Miniſter of Juſtice, intruſted with the Execution of the Proceſs of Law, does an Injury, an Action of the Caſe lies againſt him. If the Sheriff will not execute a Writ by arreſting the Party-Defendant, or taking his Goods, the Party ſhall have his Action upon the Caſe, becauſe he refuſed to do his Duty, to the Plaintiff's Damage.

The Precept which the Defendants received from the Sheriff in this Caſe was founded upon the King's Writ; and the Defendants are commanded to cauſe two Burgeſſes to be elected for the Borough of *Aylesbury*, of which they are to give Notice, and to admit every one who hath a Vote to make uſe of it; if they refuſe any Man to vote who hath a Right, they act contrary to the Duty of their Office.

It was objected, That it did not appear that the Perſons for whom the Plaintiff voted were elected, nor that they would have been elected, if his Vote had been admitted.

The Anſwer is, That it is not material whether the Perſon for whom the Plaintiff voted was choſen, or would have been choſen, if his Vote had been taken; his Right and Privilege is to give his Suffrage, to be a Party in the Election; if he be excluded from it, he is wronged, though the Perſons for whom he would have given his Vote were elected.

The Right of Action muſt accrue upon the Refuſal of the Vote, and is never to be made better or worſe by the Return, which is a Matter *ex poſt facto.*

It was ſaid in the arguing this Caſe, That the Plaintiff had no Damage; or at leaſt, that there was no ſuch Injury or Damage done to him as would ſupport an Action.

The Anſwer to that is, That the Law will never imagine any ſuch thing as *Injuria ſine Damno.* Every Injury imports Damage in the Nature of it. If a Man pick a Lock, and come into an Houſe without the Conſent of the Owner, perhaps there is no pecuniary Damage done to the Value of a Farthing, yet the Owner ſhall have an Action againſt him, and recover Damages for the Invaſion of his Poſſeſſion and Property. There are many Caſes of the ſame Nature, which have been determined upon this Ground. In the Caſe between *Starling* and *Turner*, 24 *Car.* II. in *Com. Ban.* (ſee *Ventris* firſt Part, *p.* 206.) and afterwards in *Ban. Reg.* The Plaintiff *Turner*, amongſt others, ſtood to be one of the Bridge-Maſters of *London-Bridge*, which Officer is to be elected by a Common-Hall of the City of *London*: The Queſtion was, Who had the greateſt Number of Voices? The Plaintiff demanded the Poll, and the Defendant, being then Lord Mayor of *London*, refuſed it: It was adjudged, That the Action was maintainable for refuſing the Poll, becauſe every Candidate has a Right to have it; and though perhaps if the Poll had been granted to the Plaintiff in that Action, it might have been againſt him, yet the Denial of that Right was a good Ground of Action.

Upon the ſame Reaſon, the Caſe 29 *E.* III. 18. was determined; and alſo the Caſe of *Hunt* and *Dowman*, 2 *Cr.* 478. 2 *Rolls* 21.

It is apparent by what has been ſaid, That the Plaintiff in this preſent Caſe hath been injured, in being denied his Right; and no good Reaſon can be aſſigned that ſo affects this Caſe, as to make it differ from other Caſes; though to that Purpoſe ſeveral Matters were urged and inſiſted upon. As firſt, that this would be the Occaſion of many Actions.

If that be ſo, there is the greater Reaſon to ſupport this Action, to puniſh the many Wrongs that have been done, which will prevent any more of the like Nature. If Offences multiply, Remedies againſt them ought to be advanced. If other Officers of Boroughs have been, or ſhall be guilty of the like Misfeaſances as theſe Defendants have been, it is fit they ſhould be liable, as theſe Defendants are, to make Satisfaction. If one Man be beat and impriſoned, is it any Objection

Objection against his having an Action, because all others who shall be as evilly treated as he hath been, shall have the like Remedies? The only Means to hinder Corruptions that will soon become frequent amongst those Officers of Boroughs and Corporations, is, to let them see that they are obnoxious to the Law, and that their Purses must make Satisfaction to all whom they shall injure in this Manner. It is true, if one Act which tends to the Injury of many Persons be committed, no one Person injured shall be allowed to have an Action, because the rest might have the same. *Co.* 5. *Rep.* 72. *Williams*'s Case, 3 *Cr.* 664. *Pineux* ver' *Hovenden*; as the Case of not saying Divine Service in a Chapel of a Manor to the Lord and Tenants; or for stopping of a Lane or Common-way, because the Defendant for one Act would have a Multitude of Suits against him, the Injury alike affecting a Multitude: But the Refusal of every Vote is a distinct Act: The Party grieved, whose Vote was denied, can only bring an Action for the Refusal; the others, whose Votes were admitted, are not concerned. And if an Officer denies an hundred, who have a Right, these are a hundred several Wrongs, for which he ought to be liable to as many several Actions. As if a Man will make it his Business to fling Stones, and shall hit a hundred several Men, he must make Satisfaction to them all: But surely this is so far from being an Objection, that it is a strong Argument to support the Action: For if the Mayor or Bailiff of a Borough shall have Liberty to refuse Men who have Votes, he can easily make a Majority to vote on his Side: and then, What will become of Elections? The Officer will return him that is elected by a Majority of his own making, by excluding the Votes of others that have Right.

This would encourage Officers to be partial and corrupt, and to return divers Persons to be elected in that Manner, who at least must have Possession of Seats in the House of Commons for some time, and give Voices in the making of Laws, and imposing of Taxes, until the Right of Election be determined.

And though upon hearing the Cause in the House of Commons, this Matter may be set right at last; yet, what can compensate for the Mischief that may be done to the Kingdom in the mean time, by the Votes of those who shall be partially returned, and are not the Representatives of the People of the Place who are to chuse them?

Besides, the forementioned Rule against multiplying Actions is confined to such Acts where there is another Remedy to be had; but where there is no other Remedy but an Action, the Wrong-doer must answer to so many several Actions as there are Persons injured. Suppose a Man will plough up the Ground in which a hundred Persons have a Common, he must answer all their Actions. If the Inhabitants of a Town have a common Watering-place, and a Stranger stops the Current, whereby the Water is diverted, every Inhabitant shall have his Action, because there is no other Remedy.

The injured Plaintiff in this Case has no other Remedy besides this Action; no Indictment lies, because it is a personal Wrong to the Party, and no Wrong to the Publick, but only in the Consequence of it, as an evil Example, which tends to the Encouragement of other such Officers to commit the like Transgressions: Nor is there any Danger to an honest Officer, that means to do his Duty; for where there is a real Doubt touching the Parties Right of Voting, and the Officer makes use of the best Means to be informed; and it is plain his Mistake arose from the Difficulty of the Case, and not from any malicious or partial Design, no Jury will find an Officer guilty in such a Case, nor can any Court direct them to do it; for it is the Fraud and the Malice that intitles the Party to the Action: In this Case, the Defendants knew the Plaintiff to be a Burgess, and yet fraudulently and maliciously hindered him from his Right of voting; and Justice must require that such an obstinate and unjust ministerial Officer should not escape with Indemnity.

That the Officer is only ministerial in this Case, and not a Judge, nor acting in a judicial Capacity, is most plain; his Business is only to execute the Precept, to assemble the Electors to make the Election, by receiving their Votes, computing their Numbers, declaring the Election, and returning the Persons elected: The Sheriff, or other Officer of a Borough, is put to no Difficulty in this Case, but what is absolutely necessary in all Cases. If an Execution be against a Man's Goods, the Sheriff must, at his Peril, take Notice what Goods a Man has.

Another Objection was made in respect to the Novelty of the Action; it was said, Never any such Action was brought.

In Answer to this Objection, it may be said, That probably there have not been many Occasions given for bringing such Suits. It is to be hoped, that very few have ever been so presumptuous, as to dare to make an obstinate and malicious Refusal of an undisputed Vote. If the Case has happened before, perhaps the Party, out of Consideration that only small Damages were to be expected, might be discouraged, and think it better to acquiesce. And it is probable, the ill-designing Officer would be at least so cautious as to refuse the Votes of such Persons only as he thought, by reason of the Meanness of their Circumstances, were unable to vindicate their Right. It is not every one that has such a true *English* Spirit as the Plaintiff, who could not sit down meanly under a Wrong done to him in one of the most valuable Privileges of an *Englishman*. It is not the Novelty of the Action that can be urged against it, if it can be supported by the old Grounds and Principles of Law: The Ground of Law is plain, certain, and indeed universal, that where any Man is injured in his Right, by being either hindered in, or deprived of, the Enjoyment thereof, the Law gives him an Action to repair himself.

The Case of *Hunt* and *Dowman*, which was, 16 *Jac.* I. *Ann. Dom.* 1618, of an Action by the Landlord against the Tenant, for hindering him from searching his House to see whether it was in Repair, was never brought before that time; and that of *Turner* and *Starling* was not brought 'till 23 *Car.* II.

The Law of *England* is not confined to particular Precedents and Cases, but consists in the Reason of them; which is much more extensive than the Circumstance of this or that Case. *Ratio Legis est Anima Legis*; & *ubi eadem Ratio, ibi idem Jus*, are known Maxims.

An Action against the Master of a Ship, for that the Ship, lying in the River of *Thames*, was robbed, was maintained upon the same Reason as against a common Carrier; yet such an Action was never known until 23 *Car.* II. in the Case of *Mos* and *Slue*. 1 *Cr.* 15. *Jones* 93. *Palmer* 313. *Smith* and *Cranshaw*, an Action of the Case was brought for maliciously, and without any probable Cause, indicting the Plaintiff of High-Treason: This was the first Action that was ever brought in such a Case; and yet it was adjudged maintainable upon the same Reason as upon a malicious Indictment of Felony. 2 *Levinz.* 250. *Heming* and *Beal*, an Action of the Case was brought against the Mayor of a Town, for refusing the Plaintiff to give his Vote at the Choice of a new Mayor; and there was not any Scruple made, but that the Action did well lie, though that was the first Precedent.

It is granted, That if a Freeman who hath a Right to give his Vote for the Choice of a Mayor be denied his Vote, he may maintain an Action upon the Case.

There can be no difference between that Case and this, unless it can be supposed that the Right to vote at the Election of a Mayor is of higher Estimation in the Eye of the Law, than a Right to chuse Members to serve in the High Court of Parliament.

This Action is not only founded upon the Reason of the Common Law, but it hath the Sanction of an Act of Parliament, *viz.* the Statute of *West.* 2. *cap.* 24. which says, *That whensoever from thenceforth it shall fortune in Chancery, that in one Case a Writ is found, and in a like Case falling under like Right, and wanting like Remedy, none is found, the Clerk of the Chancery shall agree in making a Writ, and by Consent of Men learned in the Law, a Writ shall be made, lest it should happen hereafter that the King's Court might fail in ministering Justice to Complainants.*

The Objection most insisted on was, That this is a Matter relating to Parliaments, and ought to be determined by the Law and Custom of Parliaments; and for that Reason is not cognizable in the Queen's Courts.

In Answer to this Objection, it was shewed, first, That this Case is proper in the Nature of it, to be determined in the Queen's Court.

2. There is no other Provision made for the Plaintiff, who is highly injured in his Right, but by bringing his Action in the Courts of Law, that have Power to determine of Men's Lives, Liberties and Properties.

First, The Case in the Nature of it is proper for the Queen's Courts. This will be apparent, if the several Rights of electing Members to serve in the House of Commons be considered.

The Right of chusing Knights of the Shire is founded upon the Electors Freehold. Matters of Freehold are determinable originally and primarily in the Queen's Court, by the Rules and Methods of the Common Law, by a Jury sworn, and by the Evidence of Witnesses upon Oath: And as the Right of the Freehold is determinable there, so are all Benefits, Rights and Advantages depending thereupon, or belonging thereto.

If a Freeholder's Voice be refused by a Sheriff, what is it should hinder the Queen's Court from trying and determining this Matter, like all other Questions of Freehold, by a Jury, upon the Oaths of Witnesses, or Evidence in Writing, whether the Plaintiff that supposes himself wronged was a Freeholder, or not?

The Right of chusing Citizens and Burgesses depends either upon Prescription or Custom, or upon Letters Patents; these are also primarily and originally cognizable by the Queen's Courts: Customs and Prescriptions are triable by the Country, that is, by a Jury of Twelve Men of that County where the Custom is alledged to be: This is known Law in all Cases without Exception.

And as to Letters Patents, if pleaded specially, the Court must judge of them; and if either Party conceives the Court hath judged amiss, he hath his Remedy by Writ of Error, 'till at last it comes where it will receive a final Judgment. So that every Right which an Elector can have is proper for the Determination of the Queen's Courts. There are various Ways of Election in different Boroughs, but they all depend upon Charters or Customs; and therefore are not more difficult to determine than other Franchises or Liberties which depend upon the same Foundations.

And whereas it was said, That by a late Act of Parliament in the 7 & 8 *W.* III. the last Determination of the House of Commons concerning the Right of Elections is to be pursued, it amounts to no more than this, That the Officer who is to make the Return, is to take Care to return him to be elected, who is chosen by a Majority of Electors qualified according to the last Determination of the House of Commons; if he does so, he incurs no Danger, he is not liable to an Action; but the House of Commons itself is not bound by that Rule. Now suppose the Officer will deny a Man a Vote, who, according to the last Determination there, ought to have one, and this the Officer did well know, what is it hinders him that had Right according to that Determination, from bringing his Action against the Officer who hath injured him? It cannot be the Act of Parliament, for the Queen's Courts are by Law the first and original Expounders of the Statutes of this Realm.

But secondly, There is no other Court of Jurisdiction appointed by the Law of *England* for determining the Right, and repairing this Injury, but the Courts of *Westminster*.

It is a general Rule, that whoever impeaches the Jurisdiction of one Court, must intitle some other Court to have a Jurisdiction of that Cause; but that is impossible to be done in this Case.

It was said, that the Determination of the Right of Elections of Members to serve in Parliament, is the proper Business of the House of Commons, which they would be always very jealous of; and this Jurisdiction of theirs is uncontested, That they exercise a great Power in that Matter, for they oblige the Officer to alter his Return according to their Judgment; and that they cannot judge of the Right of Election, without determining the Right of the Electors; and if Electors were at Liberty to prosecute Suits touching their Right of giving Voices in other Courts, there might be different Judgments, which would

make Confuſion, and be diſhonourable to the Houſe of Commons, and that therefore ſuch an Action was a Breach of their Privilege.

As to theſe Objections, ſeveral Anſwers were given.

It was admitted, That the Houſe of Commons exerciſe a Juriſdiction in determining the Right of Election of their own Members; and though the Time may be aſſign'd, when that Juriſdiction was exerciſed in another Place, yet there has been a Uſage long enough to hinder that Point from being drawn in Queſtion, eſpecially after the Sanction given to it by the Act made in the Seventh Year of King *William*'s Reign.

But tho' it be true, That the Merit of the Election of a Member be a proper Subject for the Houſe of Commons to judge of, becauſe they only can give the proper and moſt effectual Remedy, by excluding the Uſurper, and giving Poſſeſſion of the Place to him who has the Right; yet there is a great Difference between the Right of the Electors, and the Right of the Elected; the one is a Temporary Right to a Place in Parliament, *pro hac vice*, the other is a Freehold, or a Franchiſe: Who has a Right to ſit in the Houſe of Commons may be properly cognizable there; but who has a Right to chuſe, is a Matter originally eſtabliſh'd, even before there is a Parliament: A Man has Right to his Freehold by the Common Law, and the Law having annexed his Right of voting to his Freehold, it is of the Nature of his Freehold, and muſt depend upon it. The ſame Law that gives him his Right, muſt defend it for him, and any other Power that will pretend to take away his Right of voting, may as well pretend to take away the Freehold, upon which it depends.

To ſay the Plaintiff, in this Caſe, may apply to the Houſe of Commons, is not ſufficient, unleſs proved; never any ſingle Elector of any County or Borough, did complain to the Houſe of Commons, that he was debarr'd of his Vote, and deſire them to determine his particular Right. Sometimes, ſome of thoſe who have Right to chuſe in a Borough have complain'd, That Perſons have been return'd by the Officer who were not duly elected, as being an Injury done to the whole Community of the Borough, to have a Perſon without Right ſit there as their Repreſentative; but this is only to bring the Merits of the Election in Queſtion, of which that Houſe hath Cognizance, and therefore, as incident and neceſſary thereto, they may try the Right of Electors, which of them, by Cuſtom, or Letters Patents, have Voices; but this is no more than all Courts have. In the Eccleſiaſtical Courts, which proceed according to the Civil Law, if the Suit be originally proper for their Juriſdiction, they have Power to determine Things foreign thereto; as if Letters Patents, or Conveyances of Lands come in Queſtion, though primarily and originally determinable in the Courts of Common Law. Matrimony is properly under the Juriſdiction of the Eccleſiaſtical Court; and if a Queſtion ariſes between the ſuppoſed married Parties in their Life-time, or upon Dower or Baſtardy, it ſhall be tried and determin'd there: But when an Action is brought by a Man and Woman, ſuppoſing her to be his Wife, if the Defendant pleads in Abatement, that they were not married, it ſhall be tried by a Jury where the Action was brought; ſo if any one's Title to Lands depends on a Marriage, if an Action be brought to try the Title, the Marriage may be determin'd by a Jury. This ſhews plainly, That becauſe the Houſe of Commons may determine who are Electors, and who are not, incidently, and ſo far only, as it is neceſſary to try the Right of the Election, it doth not follow, that when the Right of Election is not in Queſtion, they can try the Right of an Elector.

When the Right of the Candidate is examin'd in the Houſe of Commons, it is in order to determine which Perſon hath the Right to join with them in the making of Laws, and other publick Services; and if, in order to the determining this Point, the Houſe of Commons muſt judge of the Electors, they do it only to this Purpoſe. But the Courts of Law judge of an Elector's Right wholly to another End, as it is a legal Right, to aſſert that, and to repair in Damages the Elector who is wrongfully hinder'd from exerciſing it. This is what the Houſe of Commons cannot do, nor to this Day was there ever any Application made to them to do it, and it may be reaſonably ſuppoſed they will not now begin to take it upon them.

It commonly takes up a great Part of the Time of a Seſſion, to determine the Caſes of Elections, before they can be ſure the Houſe is compoſed of ſuch as have a Right to ſit; but ſhould they once pretend to take Cognizance of particular Men's Complaints, in order to decide the Rights of Electors, it would be impoſſible for them to have any Leiſure to employ themſelves about the *Ardua & Urgentia Negotia Regni*, the Safety and Defence of the Kingdom, for which the Writ calls them together. It is granted, That the deciding of the Right of Electors is a Matter of great Weight, and in conſequence concerns the Lives and Liberties of the Subjects of *England*; but the Law hath provided a proper Remedy to be purſued in the ordinary Methods of Juſtice, a Remedy that is adequate, where Damages may be recover'd. The Plaintiff, in this Caſe, knew he had a Right by Law to give his Vote, and when he found himſelf deprived of it, he reſorts to the Law for his Remedy: And it is probable, moſt of the Electors of *England* will be of his Mind, and think it for their Intereſt to reſort to the Courts of *Weſtminſter-Hall*, for aſſerting this great Right of theirs upon Occaſion, where they may prove their Caſe by Witneſſes upon Oath, and have their Damages aſſeſs'd by their Countrymen duly ſworn; nothing of which can be done, if they are to ſeek for a Remedy in the Houſe of Commons.

Where a Man is injured, if he cannot bring his Action to recover the Thing itſelf he hath loſt by the Injury, the Law will always give him Damages in Lieu thereof.

It was ſaid in the Debate of this Caſe, That Inſtances were to be given, where the Party injured did not recover Damages; as in Caſe where one has a Right of Preſentation, and is diſturb'd, he could not recover Damages at the Common Law, and that was reſembled to the Right of an Elector, which was ſaid to be only a Right of Nomination. But the Anſwer to this Objection is plain, there the Law gives the Party a Remedy to recover the Preſentation, the Thing that was taken from him, to which he is reſtored by the Judgment; but in the preſent Caſe there is no Poſſibility for the Plaintiff to recover the Thing he has loſt, which was his Vote at the Election, for that Election is over, and can never be had again, ſo that the Plaintiff cannot poſſibly have any Reparation, unleſs it be in Damages, and this Sort of Reparation the Houſe of Commons cannot give him.

If the Plaintiff, and all other injured Electors, ſhould be obliged to go to the Houſe of Commons for Satisfaction, it may be reaſonably ſuppoſed, the Parliament may be diſſolved before it could come to his Turn to have his Cauſe heard; What would be the Conſequence of this? If the Plaintiff muſt be thereby without Remedy, Would not the Law be notoriouſly defective? And yet none will ſay, that another Parliament did ever take Cognizance of any Injury done upon Account of an Election to a preceding Parliament: But ſuppoſe the next Houſe of Commons will determine it, What endleſs Work would the Houſe of Commons be engaged in? For probably, the enſuing Election would make as many new Queſtions as that which went before, and which the Parliament did not live long enough to diſpatch.

As to what was objected, that the ſame Matter may come in Queſtion in the Houſe of Commons, where it may be determin'd, That this Plaintiff hath no Right, ſo that great Confuſion would ariſe from different Judgments in different Courts, it is no more than what may happen every Day in *Weſtminſter-Hall*, where the ſeveral Courts may be of various Opinions upon the ſame Queſtion, and yet no Hurt is done to the Publick; nay, this is no more than happens often in the Houſe of Commons, where the Right of Election in the ſame Borough is decided different Ways in different Parliaments, and they do not think themſelves diſhonour'd by it.

This Contrariety of Judgment can never appear, for the Houſe of Commons never gives a direct Judgment on this or that individual Elector's Right; the Voting is either upon a general Queſtion of the Competitors, or where the Right of Election in the Borough is placed, whether all Inhabitants, or thoſe under a particular Qualification; or whether the whole Commonalty, or a ſelected Number have Voices, and all theſe are but Ways and Means to determine the Right of Election.

If the Houſe of Commons judge of the Right of a particular Elector at any Time, it is only *pro iſta vice*, ſo far as it relates to the particular Caſe before them; but ſurely the Houſe never thought the Elector's Freehold finally concluded thereby, becauſe he is no Party to that Suit, his Right came not there in Queſtion originally, but conſequentially, in a Cauſe litigated between other Perſons, to which he is no Party; and it cannot be agreeable to right Reaſon, or the Principles of Law, for a Man's Right to be concluſively determin'd in a Cauſe between other Parties.

And after all, Where is the Damage to the Publick, if there ſhould be a Variety in the Determination of the Houſe of Commons, and the Courts of *Weſtminſter?* It is not impoſſible, in the Nature of Things, for the Courts of Law have great Advantages which the Houſe of Commons want; they want the Help of Juries, and the Power of giving Oaths; and they ought not to be diſpleaſed with their Electors, if they reſort to Courts provided with theſe Powers for aſſerting their Right of Election, eſpecially when it is conſider'd, That the Perſon whoſe Pretenſions the Houſe of Commons approves of, will ſit there, which is all they are concerned in: They are the Elected; and it would be ſtrange if that ſhould intitle them to challenge the ſole Power of deciding the Rights of their Electors, which is indeed to chuſe their Electors.

It was urged as a great Argument againſt the maintaining this Action, That it had been adjudged in the Caſe of Mr. *Onſlow*, in the 33d Year of King *Charles* the Second, (ſecond *Vent.* 37.) That no Action did lie at Common Law for a falſe Return of a Member to ſit in Parliament; and that in the Caſe of *Barnardiſton* and *Soame*, it was adjudged the Candidate could not maintain an Action againſt the Sheriff for a double Return; and if the Perſon elected to ſerve in Parliament cannot maintain an Action againſt the Officer, it was urged, *a fortiori*, That the Perſon electing, who perhaps is but a Cobler, ought not to be allowed to have ſuch an Action.

It was anſwered, That the Law of *England* has no reſpect to Perſons: If an Elector be a Cobler, he is a Freeman of *England*, and has that great Privilege belonging to him, to be repreſented in Parliament. It was remembered, with what great Variety of Opinion among the Judges that Caſe of Sir *Samuel Barnardiſton* was determined, and what an Alarm that Judgment gave to the Houſe of Commons, to ſuch a Degree, that in the Seſſion of Parliament, 1679, a Committee was appointed to enquire into it as a Grievance. And it was obſerved, That the great Deſign of the Act of Parliament made in the ſeventh Year of the late King (which was often mentioned in the Debate of this Caſe to other Purpoſes), was to cure the many Inconveniencies ariſing from that Judgment, and the Judgment in Mr. *Onſlow*'s Caſe, which only followed *Barnardiſton*'s, and was judged upon the Authority of it. But there is no Reſemblance between thoſe Caſes and the Caſe of an Elector. In *Barnardiſton*'s Caſe of a double Return of Members, the Reaſon on which the Judgment was founded, was, That a double Return was no Return which the Law took Notice of, but was only allowed of by the Cuſtom of Parliament. When an Officer who doubts, makes a double Return, he ſubmits to the Judgment of the Houſe of Commons; and if that Houſe admits of ſuch a Return, as they had often done, it would be hard the Law ſhould ſubject a Man to an Action for ſubmitting a Matter of Fact (the Truth of which the Officer doubts) to the Determination of thoſe who have a Juriſdiction of the Matter, and approve the Manner of ſuch a Return.

In the other Caſe of a falſe Return of a Member, ſeveral Reaſons may be aſſigned for the Judgment, which are not applicable to the Caſe of an Elector; perhaps it might be, becauſe ſuch a Return is a manifeſt Injury to every one of the Electors (though principally to the Candidate), and therefore it might fall within the Reaſon of *Williams*'s Caſe above mentioned, That every Elector might ſue him; and therefore none of them ſeverally can maintain the Action. But there is another Reaſon very obvious, becauſe the Candidate has a proper Remedy to recover his Place, from which he is excluded by the falſe Return; the Right of Election is cognizable in the Houſe of Commons, there he will recover

recover his Seat in Parliament, which is what the Law has the principal Regard to, and there is no Reaſon he ſhould have another Remedy elſewhere.

It is abſurd to ſay, The Elector's Right of chuſing is founded upon the Law and Cuſtom of Parliament; it is an original Right, Part of the Conſtitution of the Kingdom, as much as a Parliament is, and from whence the Perſons elected to ſerve in Parliament do derive their Authority, and can have no other but that which is given to them by thoſe that have the original Right to chuſe them; this doth not touch the Juriſdiction claimed and exerciſed by the Houſe of Commons, to try the Right of the Election of their own Members; they who pretend to be admitted to ſit there, ought to make out their Right to the Houſe; but there is no Ground to infer from thence, that the Houſe hath Power to try or determine the Right of other Perſons who are not their Members, and do not pretend to any Place amongſt them.

It was ſaid, That if this Action were allowed, there would be a Way found out for the Lords to let themſelves into, to judge of the Right of the Members of the Houſe of Commons to ſit there, and by Parity of Reaſon to judge of their own Privileges, as if Actions were brought for Words ſpoken in the Houſe of Commons, or other Things happening in that Houſe, which would be of ill Conſequence.

But it was ſaid, in the firſt place, That this Objection was little applicable to the preſent Caſe, becauſe it has no Relation to the ſitting of that Member, for whom the Elector who brings his Action gave his Vote.

And ſecondly, If things are ſo ordered by the Conſtitution of the *Engliſh* Government, that the ultimate Reſort in point of Judicature is lodged with the Lords, let the Caſe concern what it will, when it is brought before them by Writ of Error, they are bound to give Judgment one way or other; and as to the particular Inſtance mentioned, relating to Words ſpoken in the Houſe of Commons, it was ſaid there never was a greater Attempt made upon Liberty of Speech in the Houſe of Commons, than by the Information brought in the *King's-Bench*, 5 *Car.* I. againſt Sir *John Elliot*, *Denzil Holles*, and *Benjamin Valentine*, Eſquires, for Words ſpoke in the Houſe of Commons; they pleaded to the Juriſdiction of the Court, as being for what was done in Parliament, and therefore ought not to be examined or puniſhed elſewhere; but Judgment was given againſt them, and great Fines impoſed upon them [*Cro. Car.* 181]. In the Parliament, which met in 1640, theſe proceedings were taken into Conſideration with great Warmth, and the 8th of *July*, 1641, it was reſolved in the Houſe of Commons, That the exhibiting of that Information was a Breach of the Privilege of Parliament; and that the over-ruling of the Plea to the Juriſdiction of the Court, and the Judgment, and all that followed thereupon, was againſt the Law and Privilege of Parliament; and many other ſevere Votes were paſſed. Thus the Matter reſted 'till after the Reſtoration of King *Charles* the Second; but when Things grew to be ſettled, and there was Leiſure to conſider the Conſequences, of former Proceedings, the Houſe of Commons began to think that thoſe Votes were not to be depended upon as a ſufficient Security, in a Caſe of ſo high a Nature, ſince upon Liberty of Speech, all Parliamentary Debates were founded; and they could not think that great Privilege ſafe, while ſo ſolemn a Judgment ſtood in Force. Therefore, in 1667, the Conſideration of this Matter took up a great part of the Seſſion, and the beſt Expedient they could find out, was, firſt, To come to a Reſolution among themſelves, That the Judgment given, 5 *Car.* I. in that Caſe was an illegal Judgment, and againſt the Freedom and Privilege of Parliament; and then to preſent this Reſolution of theirs to the Lords at a Conference, which was done 10 *December*, 1667, and to deſire their Concurrence. The next Day the Lords concurred in the Reſolution, and at the ſame time (which was a thing aimed at, and deſired by the Houſe of Commons) the Lords ordered the Lord *Holles* to bring a Writ of Error in Parliament, to the end there might be a judicial Determination of that great Point, which was done accordingly; and on the 15th of *April*, 1668, that Cauſe coming to be heard in Parliament, the Judgment in the *King's-Bench* was reverſed, to the great Satisfaction of the Houſe of Commons.

So little did the Houſe of Commons entertain Jealouſies of this Kin, that they themſelves reſorted to the Judicature of the Lords, in the Manner that has been mentioned, upon ſo weighty an Occaſion.

It was objected, that many Inconveniencies would follow, if this Action were allowed; but they were very ſparing in giving particular Inſtances of thoſe Inconveniencies.

But nothing is plainer than that by the Plaintiff's prevailing in this Action, great Inconveniencies will be prevented, and the Subjects Right and Property ſecured againſt the Partialities and Corruption of Officers, who are truſted in a Matter of ſo great Moment, as the receiving and allowing the Suffrages upon Elections.

This tends to encounter falſe Returns in the firſt Approach; and to have juſt Returns is all the Houſe of Commons ought to deſire.

How endleſs would the Inconveniencies be, if this Action did not lie! How would Occaſions of Complaint be multiplied! The Officers who had the Return would become the Maſters of Elections, and admit and reject Electors as they pleaſed, with Impunity; for if the Electors are only to ſeek for a Remedy before the Houſe of Commons, it would be a Remedy worſe than the Diſeaſe; the greateſt part of their Caſes would never be determined for want of Time; and they who could get their Caſes heard, could have no Amends; that is, no Damages given them for Reparation of the Wrong, beſides the Abſurdity of having for the moſt part the Parties to the Injury, thoſe who ſit by a falſe Peturn, Parties to the Judgment.

So that to deny this Action, is to deny the Benefit of the Law in a Matter of the moſt tender Concern to an *Engliſhman*.

To pretend it to be a Breach of Privilege of the Houſe of Commons, for an Elector to ſeek for Remedy at Law, if he be wrongfully excluded of his Vote, is very ſtrange.

That certainly can never be eſteemed a Privilege of Parliament, that is incompatible with the Rights of the People. Every *Engliſhman* is intitled to Reparation for the Injuries done to his Rights and Franchiſes in the ordinary and common Methods of Juſtice, where the Juries who try, and the Witneſſes who give Evidence, are to be upon their Oaths. *Magna Charta*, *Cap.* 29. is very expreſs. *No Freeman ſhall be diſſeiſed of his Freehold, or Liberties, or Free Cuſtoms, unleſs by the lawful Judgment of his Peers, or by the Law of the Land.*

By the *lawful Judgment of the Peers*, in the Caſe of a Commoner, is meant, by a Jury of lawful Men upon their Oaths.

If one be injured in ſuch a Manner as the Plaintiff in this Action hath been, no Man can ſay that *per Legem Terræ*, by the Law of the Land, he can have a Remedy for Satisfaction, and aſſerting his Right in the Houſe of Commons; if there be any ſuch Law, it muſt be either Statute Law or Common Law. No Statute gives him ſuch a Remedy, nor doth the Common Law, becauſe that is conſtant Uſage for Time immemorial; and there is not one Precedent can be produced, that ever any Man, upon ſuch an Occaſion, did ever apply to the Houſe of Commons for Relief.

Upon the Fourteenth Day of *January*, 1703, the Houſe of Lords reverſed the Judgment, and gave Judgment that the Plaintiff ſhould recover.

This State of the Caſe being read and approv'd of, the Houſe came to the following Reſolutions, *viz.*

IT is Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, That by the known Laws of this Kingdom, every Freeholder, or other Perſon, having a Right to give his Vote at the Election of Members to ſerve in Parliament, and being wilfully denied or hindered ſo to do by the Officer who ought to receive the ſame, may maintain an Action in the Queen's Courts againſt ſuch Officer, to aſſert his Right, and recover Damages for the Injury.

IT is Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, That the aſſerting that a Perſon having Right to give his Vote at an Election, and being hindered ſo to do by the Officer who ought to take the ſame, is without Remedy for ſuch Wrong by the ordinary Courſe of Law, is deſtructive of the Property of the Subject, againſt the Freedom of Elections, and manifeſtly tends to encourage Corruption and Partiality in Officers, who are to make Returns to Parliament, and to ſubject the Freeholders, and other Electors, to their arbitrary Will and Pleaſure.

IT is Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, That the declaring *Matthew Aſhby* guilty of a Breach of Privilege of the Houſe of Commons, for proſecuting an Action againſt the Conſtables of *Aylesbury*, for not receiving his Vote at an Election, after he had, in the known and proper Methods of Law, obtain'd a Judgment in Parliament for Recovery of his Damages, is an unprecedented Attempt upon the Judicature of Parliament, and is, in effect, to ſubject the Law of *England* to the Votes of the Houſe of Commons.

IT is Reſolved by the Lords Spiritual and Temporal in Parliament aſſembled, That the deterring Electors from proſecuting Actions in the ordinary Courſe of Law, where they are deprived of their Right of voting, and terrifying Attornies, Sollicitors, Counſellors, and Serjeants at Law, from ſolliciting, proſecuting, and pleading in ſuch Caſes, by voting their ſo doing to be a Breach of Privilege of the Houſe of Commons, is a manifeſt aſſuming a Power to controul the Law, to hinder the Courſe of Juſtice, and ſubject the Property of *Engliſhmen* to the arbitrary Votes of the Houſe of Commons.

The Declaration and Lenity of the Houſe of Commons to *Aſhby*, had not that Effect as might have been expected; for before the then following Seſſions, not only Execution was taken out upon the ſaid Judgment, but Mr. *Mead* brought Actions of like Nature for *John Paty*, *John Oviat*, *John Paton*, Jun. *Henry Baſſe*, and *Daniel Horne*, five other Inhabitants of *Aylesbury*, for being denied their Votes at the Election of Members to ſerve in Parliament for the ſaid Borough of *Aylesbury*; of which Complaint being made to the Houſe of Commons, they proceeded as follows:

All the Proceedings in relation to the Ayleſbury-*Men, committed by the Houſe of Commons: And the Report of the Lords Journal, and Reports of the Conferences, and of the Free Conference* *.

Martis 21 *die Novembris*, 1704.

A Complaint being made to the Houſe, That *Robert Mead*, an Attorney at Law, had proceeded in the Cauſe of *Aſhby* and *White*, and others, ſince the laſt Seſſion of Parliament, and taken the Defendants in Execution, in Breach of the Privilege of this Houſe:

Ordered,

That the Matter of the ſaid Complaint be heard at the Bar of this Houſe upon *Thurſday* Morning next.

Ordered,

That the ſaid *Robert Mead* do attend this Houſe upon *Thurſday* Morning next.

Jovis 23 *die Novembris*, 1704,

The Order of the Day being read for the hearing the Matter of the Complaint againſt *Robert Mead*, an Attorney at Law, for having proceeded in the Cauſe of *Aſhby* and *White*, and others, ſince the laſt Seſſion of Parliament, and taken the Defendants in Execution, in Breach of the Privilege of this Houſe:

Ordered,

That the Hearing the Matter of the ſaid Complaint be adjourn'd until *Tueſday* Sevennight.

Ordered,

That the ſaid *Robert Mead* do attend this Houſe upon *Tueſday* Sevennight.

A further Complaint being made to the Houſe, That ſince the Reſolutions of this Houſe the laſt Seſſion, upon the Caſe of *Aſhby* and *White*,

* *Martis* 13 *die Martii*, 1704. *Ordered*, That all the Proceedings in relation to the *Ayleſbury*-Men, committed by this Houſe, and this Report of the Lords Journal, and Reports of the Conferences, and of the Free Conference, be printed.

Ordered,

That *Mr. Speaker* do appoint the Printer of the ſaid Proceedings and Reports.

Paul Jodrell, Cl. Dom. Com.

there

there had been several new Actions brought by *John Paty*, *John Oviat*, *John Paton*, Junior, and *Henry Basse*, and prosecuted by the said *Robert Mead*, against the Constables of *Aylesbury*, in Breach of the Privilege of this House:

Ordered,

That the Matter of the said Complaint be also heard at the Bar of this House upon *Tuesday* Sevennight.

Ordered,

That the said *John Paty*, *John Oviat*, *John Paton*, Junior, and *Henry Basse*, do attend this House upon *Tuesday* Sevennight.

Ordered,

That Copies of the Original Declarations in the said Actions be laid before this House.

Veneris 24 die Novembris, 1704.

Ordered,

That *Daniel Horne*, a Plaintiff in one of the Actions brought against the Constables of *Aylesbury*, of which Complaint was made to the House Yesterday, do attend this House upon *Tuesday* Sevennight.

Martis 5 die Decembris, 1704.

The Orders of the Day being read for the Hearing the Matter of the Complaints of several Breaches of Privilege committed by *Robert Mead*, *John Paty*, *John Oviat*, *John Paton*, Junior, *Henry Basse*, and *Daniel Horne*, and for their attending this House: The Serjeant at Arms was called upon, to give an Account of what had been done for the Summoning of them; and he acquainted the House, that his Messenger had been at *Aylesbury*, and left a Copy of the Order at Mr. *Mead*'s House, and at his Chamber in *Thavies-Inn*, but that he does not attend; but that all the other Persons had been summoned, and do attend.

And thereupon, Mr. *Arthur Crabb* was called for, and brought in with the Mace to the Bar, who said:

That he was Attorney for the late Constables of *Aylesbury* in five several Actions, at the several Suits of *John Paty*, *John Oviat*, *John Paton*, Junior, *Henry Basse*, and *Daniel Horne*: And that he did serve Mr. *Robert Mead*, the 6th of *March* last, with the Resolutions of this House of the last Session of Parliament, relating to the Proceedings in the Cause of *Ashby* and *White*, and others, by giving him a Copy thereof, and shewing him the Resolutions signed by the Clerk of this House: And that he afterwards, *viz.* the 10th of *June* last, had from Mr. *Mead* Copies of five Declarations in the said Actions, *viz.* one from Mr. *Mead* himself, and the other four left at his House, which Mr. *Mead* afterwards owned, and that he paid Mr. *Mead* for them all.

Which Copies of Declarations the said Mr. *Crabb* produced to the House, together with Notice in Writing from the said Mr. *Mead*, the 22d of *July* last, That he would try one of the said Actions, but not the other four, at the then next Assizes.

And then he withdrew.

And the Notice was read.

And the Copy of the Declaration between *Paty* and *White & al'* was also read, and is as followeth *(a)*:

Paschæ, Anno Tertio Annæ Reginæ.

Bucks ff. JOhannes Paty queritur de Will'o White, Ric'o Talboys, Will'o Bell, & Ricardo Heydon, in Custod' Mar' &c. pro eo, viz. quod cum vicesimo sexto die Decembris Anno Regni Dom' Williel' Tertii nuper Regis Ang' &c. duodecimo e Cur' Cancellar' ipsius nuper Regis apud Westm' in Com' Mid' emanavit quoddam Breve ipsius nuper Regis tunc Vic' Com' Bucks pred' direct' recitando quod dict' nuper Rex de advisamento & assensu Concilii sui pro quibusdam arduis & urgentibus negotiis eund' nuper Regem Statum & Defensionem Regni sui Ang' & Ecclesie Anglicane concernen' quoddam Parliamentum suum apud Civitat' suam Westm' sexto die Februarii tunc prox' futur' teneri ordinavit & ibidem cum Prelatis Magnatibus & Proceribus dicti Regni sui colloquium habere & tractatum Idem nuper Rex eidem tunc Vic' Com' Bucks predict' Breve precepit firmiter injungend' quod facta Proclamatione in prox' Com' suo post reception' ejusd' Brevis tenend' de die & loco predict' duos Milites Gladiis cinctos magis idoneos & discretos Com' pred' & de qualibet Civitate Com' illius duos Cives & de quolibet Burgo duos Burgenses de discretioribus & magis sufficien' libere & indifferenter per illos qui hujusmodi Proclamation' interforent juxta form' Statut' inde edit' & provis. eligi & nomina eorundem Militum Civium & Burgensium sic eligend' in quibusdam Indentur' inter ipsum tunc Vic' & illos qui hujusmodi Election' interforent inde conficiend' licet hujusmodi eligend' presentes forent vel absentes inseri eosq; ad dictos diem & locum venire faceret Ita quod iidem Milites plenam & sufficien' Potestatem pro se & Communitate Com' illius ac dicti Cives & Burgenses pro se & Communitate Civitat' & Burgor' pred' divisim ab ipsis haber' ad faciend' & consentiend' hiis que tunc ibidem de Communi Concil' dicti Regni ipsius nuper Regis (favente Deo) contigerent ordinari super negotiis antedictis Ita quod pro defectu potestat' hujusmodi seu propter improvidam Election' Militum Civium aut Burgensium pred' dicta negotia infecta non remanerent quovismodo & Election' ill' in plen' Com' ipsius tunc Vic' fact' distincte & aperte sub Sigillo suo & Sigillis eorum qui Election' ill' interforent eidem nuper Regi in tunc Cancellar' sua ad dict' diem & locum certificaret indilate remitten' eidem nuper Regi alteram partem Indentur' pred' eidem Brevi cons' una cum Brevi illo. Quod quidem Breve postea & ante predictum sextum diem Febr' in Brevi pred' mentionat' scil' vicesimo nono die Decemb' Anno duodecimo sup' dicto apud Burgum de Aylesbury in dicto Com' Bucks cuidam Roberto Weedon Arm' adtunc Vic' ejusd' Com' Bucks deliberat' fuit in forma Juris exequend' Virtute cujus quidem Brevis predictus Robertus Weedon Vic' Com' Bucks pred' ut prefertur tunc & ibidem existen' postea & ante predict' sextum diem Februar' scil' tricesimo die Decemb' Anno duodecimo sup' dicto apud Burgum de Aylesbury pred' in dicto Com' Bucks fecit quoddam preceptum suum in Scriptis sub Sigillo ipsius Roberti Weedon Officii sui Vic' Com' Bucks pred' Constabular' Burgi de Aylesbury pred' direct' (recitand' diem & locum Parliamenti pred' tenend' perinde eos requiren' & eis in mandato dans quod facta Proclamatione infra Burg' pred' de die & loco in eodem Precepto recitat' causarent libere & indifferenter eligi duos Burgenses Burgi ill' de discretioribus & magis sufficien' per ipsos qui hujusmodi Proclamatione interforent juxta form' Statut' in talib' casib' edit' & provis' & nom' dictor' Burgens' sic elect' licet presentes forent vel absentes inseri in quibusd' Indentur' inter dictum Vic' & illos qui haberent interesse in hujusm' Election' & quod eos venire facerent ad diem & locum in eodem precept' recitat' Ita quod dicti Burgenses haberent plen' & sufficien' potestat' pro se & Communitate Burgi pred' ad faciend' & consentiend' iis que tunc ibidem de com' Concilio dicti Regni (favente Deo) contigerent ordinari sup' negotiis antedict' Ita quod pro defectu hujusmodi potestat' aut propter improvidam Election' Burgensium pred' dicta negotia infecta non remaner' Et quod Election' indilate eidem tunc Vic' certificarent mittend' eidem Vic' alteram partem Indentur' predict' Precept' annex' ut idem Vic' eandem certificaret dicto nup' Regi in Cancellar' sua ad diem & locum predict' Quod quidem Preceptum postea & ante predict' sextum diem Februarii scil' eodem tricesimo die Decemb' Anno duodecimo sup' dict' apud Burgum de Aylesbury pred' in dicto Com' Bucks eisdem Will'o White Ric'o Talboys Will'o Bell & Ric'o Heydon adtunc & usque ad & post retorn' ejusdem Brevis Constabular' Burgi de Aylesbury predict' existen' in forma Juris exequend' deliberat' fuit quibus quidem Will'o White Ric'o Talboys Will'o Bell & Ric'o Heydon ratione Officii sui pred' Constabular' Burgi pred' executio Precepti ill' de jure adtunc & ibid' pertinuit Virtute cujus quidem Precepti ac Vigore Brevis pred' Burgenses Burgi pred' existen' in ea parte debite premoniti postea & ante predict' sextum diem Februarii scil' sexto die Jan' Anno duodecimo sup' dicto apud Burgum de Aylesbury pred' coram eisdem Will'o White Ric'o Talboys Will'o Bell & Ric'o Heydon Constabular' Burgi predict' assemblat' fuer' ad duos Burgenses pro Burgo ill' eligend' secund' exigentiam Brevis & Precepti pred' ac duran' assemblation' ill' ad intention' ill' & antequam hujusmodi duo Burgenses Virtute Brevis & Precepti pred' electi fuer' scil' die & Anno ult' sup' dict' apud Burg' de Aylesbury pred' in Com' pred' idem Johannes Paty adtunc & ibidem existen' Burgen' & Inhabitan' Burgi predict' & Eleemozinas ibidem non recipien' sed debite qualificat' & intitulat' existen' ad suffragium suum ad eligend' duos Burgenses pro Burgo pred' secundum exigentiam Brevis & Precepti pred' dand' coram eisdem Will'o White Ric'o Talboys Will'o Bell' & Ric'o Heydon quatuor Constabular' Burgi ill' quibus tunc & ibidem debite pertinuit ad Suffragium ipsius Johannis Paty de & in premissis capiend' & allocand' parat' fuit & obtulit suffragium suum dare pro eligend' Thomam Lee Bar' & Simon Mayne Ar' duos Burgenses pro Parliamento ill' Virtute & secundum exigentiam Brevis & Precepti pred' ac suffragium ipsius Johannis Paty adtunc & ibidem de jure debuit admitti & pred' Will'us White Ric'us Talboys Will'us Bell & Ric'us Heydon sic Constabular' Burgi pred' tunc & ibidem existen' adtunc & ibidem requisit' fuer' per ipsum Johan' Paty ad suffragium ipsius Johan' Paty pred' in premissis recipiend' & allocand' iidem tamen Will'us White Ric'us Talboys Will'us Bell & Ric'us Heydon adtunc & ibidem ut prefertur Constabular' Burgi pred' existen' premissorum non ignari sed machinan' & fraudulent' & malitiose intenden' eundem Johan' Paty in hac parte dampnificare & de Privilegio suo de & in premissis pred' impedire & totalit' frustrare eundem Johan' Paty suffragium suum in ea parte dare adtunc & ibidem obstruxer' & adtunc & ibidem penitus recusaver' ad eundem Johan' Paty suffragium suum pro eligend' duos Burgenses pro Burgo ill' ad Parliament' pred' dare permittend' ac suffragium ipsius Johan' Paty pro Electione ill' non receper' neq; allocaver' Ac duo Burgenses de Burgo ill' pro Parliament' pred' (predicto Johanne Paty sic ut prefertur exclus') sine aliquo suffragio ipsius Johannis Paty adtunc & ibidem Virtute Brevis & Precepti pred' electi fuer' in enervation' pred' Privileg' pred' Johannis Paty de & in premissis pred' Unde idem Johannes Paty dicit quod ipse deteriorat' est & dampnum habet ad valentiam ducentar' lib' ac inde producit Sectam &c.

J. Tomson pro Quer.
Crab per Ja. Close pro Def. } Pleg' &c.

The other Declarations were:

Johannes Oviat, *Johannes Paton*, Jun. *Henry Basse*, *Daniel Horne*, } *Versus* { *Thomas Ray & al' Constabular' Burgi de Aylesbury.*

And, *mutatis mutandis*, were the same with the former Declarations against *White* and others *(b)*.

Then the said *John Paty*, *John Oviat*, *John Paton*, Junior, *Henry Basse*, and *Daniel Horne*, were severally called in to the Bar, and examined, and then withdrew.

Resolved,

That it appears to this House, That *John Paty* of *Aylesbury* has been guilty of commencing and prosecuting an Action at Common Law against *William White*, and others, late Constables of *Aylesbury*, for not allowing his Vote in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

Resolved,

That it appears to this House, That *John Oviat* of *Aylesbury* has been guilty of commencing and prosecuting an Action at Common Law against the late Constables of *Aylesbury*, for not allowing his Vote in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

Resolved,

That it appears to this House, That *John Paton*, Junior, of *Aylesbury*, has been guilty of commencing and prosecuting an Action at Common Law against the late Constables of *Aylesbury*, for not allowing his Vote in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

(a) This Declaration of *Paty* relates to the Election of Members to serve in the Parliament called in the 12th Year of his late Majesty's Reign.
(b) These Declarations relate to the Election of Members to serve in the Parliament called in the First Year of her present Majesty's Reign.

Reso.ved,

Resolved,
That it appears to this House, That *Henry Basse* of *Aylesbury*, has been guilty of commencing and prosecuting an Action at Common Law against the late Constables of *Aylesbury*, for not allowing his Vote in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

Resolved,
That it appears to this House, That *Daniel Horne* of *Aylesbury*, has been guilty of commencing and prosecuting an Action at Common Law against the late Constables of *Aylesbury*, for not allowing his Vote in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

Resolved,
That it appears to this House, That *Robert Mead* has been guilty of soliciting and prosecuting (as Attorney at Law) divers Actions at Common Law against *William White* and others, late Constables of *Aylesbury*, for not allowing divers Votes in the Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the Privileges of this House.

Ordered,
That the said *John Paty* be, for his said Offence, committed Prisoner to her Majesty's Gaol of *Newgate*; and that *Mr. Speaker* do issue his Warrant accordingly.

Ordered,
That the said *John Oviat* be, for his said Offence, committed Prisoner to her Majesty's Gaol of *Newgate*, and that *Mr. Speaker* do issue his Warrant accordingly.

Ordered,
That the said *John Paton* Junior be, for his said Offence, committed Prisoner to her Majesty's Gaol of *Newgate*; and that *Mr. Speaker* do issue his Warrant accordingly.

Ordered,
That the said *Henry Basse* be, for his said Offence, committed Prisoner to her Majesty's Gaol of *Newgate*; and that *Mr. Speaker* do issue his Warrant accordingly.

Ordered,
That the said *Daniel Horne* be, for his said Offence, committed Prisoner to her Majesty's Gaol of *Newgate*; and that *Mr. Speaker* do issue his Warrant accordingly.

Ordered,
That the Serjeant at Arms attending this House do take care that the said Warrants be executed.

Ordered,
That the said *Robert Mead* be, for his said Offence, taken into the Custody of the Serjeant at Arms attending this House.

Jovis 1 *die Februarii*, 1704.

Ordered,
That the Keeper of *Newgate* do To-morrow Morning bring to this House *John Paty*, *John Oviat*, *John Paton* Junior, *Henry Basse*, and *Daniel Horne*, committed by this House; and that *Mr. Speaker* do issue his Warrant or Warrants accordingly.

Veneris 2 *die Februarii*, 1704.

The House being informed, That the Keeper of *Newgate* attended (according to Order) with *John Paty*, *John Oviat*, *John Paton* Junior, *Henry Basse*, and *Daniel Horne*, committed by this House, several of them were severally called in and examined, and then withdrew.

And also the Keeper and his Clerk, and Turnkey, and one *Edward Hill*, were called in and examined, and then withdrew.

Ordered,
That the said *John Paty*, *John Oviat*, *John Paton* Junior, *Henry Basse*, and *Daniel Horne*, be remanded Prisoners to her Majesty's Prison of *Newgate*; and that *Mr. Speaker* do issue his Warrants accordingly.

Sabbati 24 *die Februarii*, 1704.

The House being informed, That there have been Endeavours to bring a Writ of Error on the Proceedings in the Court of *Queen's-Bench*, upon a *Habeas-Corpus* granted there for the Persons committed by this House to *Newgate* for Breach of their Privilege, and thereby to bring the Commitments of this House under the Examination of the House of Peers *:

Resolved,
That an humble Address be presented to her Majesty, humbly to lay before her Majesty the undoubted Right and Privilege of the Commons of *England*, in Parliament assembled, to commit for Breach of Privilege; and that the Commitments of this House are not examinable in any other Court whatsoever: And that no such Writ of Error was ever brought, nor doth any Writ of Error lie in this Case. And that as this House hath expressed their Duty to her Majesty, in giving Dispatch to all the Supplies, so they have an entire Confidence in her Majesty's Goodness and Justice, That she will not give Leave for the bringing any Writ of Error in this Case; which will tend to the overthrowing the undoubted Rights and Privileges of the Commons of *England*.

Ordered,
That the said Address be presented to her Majesty by such Members of this House as are of her Majesty's most Honourable Privy Council.

Resolved,
That whoever has abetted, promoted, countenanced, or assisted the Prosecution of the several Writs of *Habeas Corpus*, brought for the Prisoners committed by this House, and since their being remanded have endeavoured the procuring Writs of Error, are guilty of conspiring to make a Difference between the Lords and Commons in Parliament assembled, are Disturbers of the Peace of the Kingdom, and have endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the Commons of *England* in Parliament Assembled.

Ordered,
That a Committee be appointed to examine what Persons have been concerned in soliciting, prosecuting, or pleading, upon the Writs of *Habeas Corpus*, or Writs of Error, on the behalf of the Persons committed to *Newgate* for Breach of the Privilege of this House; or what other Persons have promoted or abetted the same.

And a Committee was accordingly appointed; and that they do meet this Afternoon, as soon as the House is risen, in the Speaker's Chamber, and have Power to send for Persons, Papers, and Records; and to sit *de die in diem*.

Lunæ 26 *die Februarii*, 1704.

Mr. Secretary *Hedges* acquainted the House, That their Address of *Saturday* last, in relation to the Writs of Error therein mentioned, having been presented to her Majesty, according to Order, her Majesty was pleased to give this gracious Answer; *viz.*

Her Majesty is much troubled to find the House *of* Commons *of Opinion, That her granting the Writs of Error, mentioned in their Address, is against their Privileges, of which her Majesty will always be as tender as of her own Prerogative; and therefore the* House of Commons *may depend, her Majesty will not do any thing to give them any just Occasion of Complaint: But this Matter, relating to the Course of judicial Proceedings, being of the highest Importance, her Majesty thinks it necessary to weigh and consider very carefully what may be proper for her to do in a thing of so great a Concern.*

Resolved, That this House will take her Majesty's Gracious Answer into Consideration To-morrow Morning.

The Earl of *Dysert* reported from the Committee appointed to examine what Persons have been concerned in soliciting, prosecuting, or pleading upon the Writs of *Habeas Corpus*, or Writs of Error, on the behalf of the Persons committed to *Newgate* for Breach of the Privileges of this House, or what other Persons have promoted or abetted the same, the Matter as it appeared to them; which they had directed him to report to the House, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read, and is as followeth:

Upon the Examination of several Persons, it appeared to the Committee, That Mr. *Alexander Denton* (afterwards Mr. Justice *Denton*) moved in the Court of *Queen's-Bench* for the Writs of *Habeas Corpus*, on behalf of the Persons committed to *Newgate* for Breach of the Privileges of this House †.

That Mr. Serjeant *Hook* moved in the Court of *Queen's-Bench*, to shorten the Day for the Return of the said Writs.

That Mr. *Francis Page* (afterwards Mr. Justice *Page*), Mr. *James Mountague*, Mr. *Nicholas Lechmere*, and Mr. *Alexander Denton*, pleaded on the Returns of the said Writs.

That Mr. *James Mountague* (late Lord Chief Baron), and Mr. *Nicholas Lechmere* (late Lord *Lechmere*) attended as Counsel at the Lord Chief Justice *Holt*'s Chamber, to consider what Entry should be made of the *Remittitur*.

Hollingshead, a Messenger attending this House, informed the Committee, That he endeavoured to serve the Summons upon Mr. *Lee* of *Clement's-Inn*; but not meeting with him, he shewed his Clerk the original Order of Summons, which his Clerk refused to read; thereupon he offered him a Copy of it, which he refused to receive: However, he left the Copy in Mr. *Lee*'s Chamber.

Kingham, another Messenger, informed the Committee, He had personally served —— *Harris* with the Order of Summons, and he said he would attend: But neither *Lee* nor *Harris* attended the Committee, according to the Summons of the Committee.

Resolved, That it appears to this House, That Mr. *Lee*, of *Clement's-Inn*, having been summoned to attend a Committee of this House, and not attending thereupon, is guilty of a Contempt and Breach of the Privilege of this House.

Ordered, That the said Mr. *Lee* be, for his said Contempt and Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

Resolved, That it appears to this House, That —— *Harris* having been summoned to attend a Committee of this House, and not attending thereupon, is guilty of a Contempt and Breach of the Privilege of this House.

Ordered, That the said —— *Harris* be, for his said Contempt and Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

A Motion being made, and the Question being put, That the farther Consideration of the said Report be adjourned till To-morrow Morning:

It passed in the Negative.

Then a Debate arising upon the said Report, and the time being come for the House to attend her Majesty, as she had appointed, with an Address:

Resolved, That the Debate be adjourned.

Resolved, That the Debate be adjourned till Six a-Clock in the Evening.

Post Meridiem.

The House resumed the adjourned Debate upon the Report from the Committee appointed to examine what Persons have been concerned in soliciting, prosecuting, or pleading upon the Writs of *Habeas Corpus*, or Writs of Error, on the behalf of the Persons committed to *Newgate* for Breach of the Privilege of this House; or what other Persons have promoted or abetted the same.

Resolved, That Mr. *Francis Page*, in pleading upon the Return of the *Habeas Corpus*, on behalf of the Prisoners committed by this House, is guilty of a Breach of the Privilege of this House.

Ordered, That the said Mr. *Francis Page* be, for the said Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

* What incensed the Commons yet more, was the Behaviour of *John Paty* and *John Oviat*, two of the Prisoners, who thinking themselves wronged in their being remanded to *Newgate*, humbly petitioned the Queen for a Writ of Error, in order to bring the Judgment of the Court of *Queen's-Bench* before her Majesty in Parliament. The Commons were no sooner informed of these Petitions, but they made the above Votes. *Annals of Queen* Anne, Vol. III. p. 188.

† The Arguments on the *Habeas Corpus* are inserted after these Proceedings, that there may be no Interruption in the Proceedings of the House of Commons.

Resolved, That Mr. *James Mountague*, in pleading upon the Return of the *Habeas Corpus*, on the behalf of the Prisoners committed by this House, is guilty of a Breach of the Privilege of this House.

Ordered, That the said Mr. *James Mountague* be, for the said Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

Resolved, That Mr. *Nicholas Lechmere*, in pleading upon the Return of the *Habeas Corpus*, on the behalf of the Prisoners committed by this House, is guilty of a Breach of the Privilege of this House.

Ordered, That the said Mr. *Nicholas Lechmere* be, for the said Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

Resolved, That Mr. *Alexander Denton*, in pleading upon the Return of the *Habeas Corpus*, on the behalf of the Prisoners committed by this House, is guilty of a Breach of the Privilege of this House.

Ordered, That the said Mr. *Alexander Denton* be, for the said Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

Ordered, That *John Paty*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Serjeant at Arms attending this House.

Ordered, That *John Oviat*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Serjeant at Arms attending this House.

Ordered, That *John Paton* Junior, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Serjeant at Arms attending this House.

Ordered, That *Henry Basse*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Serjeant at Arms attending this House.

Ordered, That *Daniel Horne*, Prisoner in *Newgate* by Order of this House, for a Breach of the Privilege of this House, be discharged from his said Confinement there, and immediately removed and delivered over into the Custody of the Serjeant at Arms attending this House.

Ordered, That *Mr. Speaker* do issue his Warrants for the Removal and Delivery over of the said *John Paty*, *John Oviat*, *John Paton*, Junior, *Henry Basse*, and *Daniel Horne*, into the Custody of the Serjeant at Arms attending this House. *

Martis 27 die Februarii, 1704.

The House calling upon the Serjeant to give an Account what he had done in Execution of the Orders of this House made Yesterday, he gave the House an Account thereof accordingly, as followeth, *viz.*

That he had received into his Custody the five Persons which were committed to *Newgate*, this Morning, and had found Mr. *James Mountague* at his own House, and taken him into his Custody; but that he shewed a Protection from the House of Lords, upon the Petition of the said Persons, by which the said Mr. *Mountague* and Mr. *Page*, Mr. *Lechmere* and Mr. *Denton*, and *William Lee* and *John Harris* (who were Yesterday ordered to be taken into Custody) were assigned Counsel and Attornies for the said Persons, and protected by the House of Lords; and that all Officers, Serjeants at Arms, and other Persons, were thereby forbid to meddle with them; with which *Mr. Serjeant* told Mr. *Mountague* he would acquaint this House.

That he had also like to have taken Mr. *Nicholas Lechmere*, but that he got out of his Chamber in the *Temple*, two Pair of Stairs high, at the back Window, by the help of his Sheets and a Rope; and that the said *Harris* was also taken into Custody; but that Mr. *Page* and Mr. *Denton*, and Mr. *Lee*, were not then found.

Ordered, That some Members be appointed to search the Journals of the House of Lords, what Proceedings have been in that House, in relation to the five Persons committed to *Newgate* for Breach of the Privilege of this House; and report the same to the House.

And some Members were appointed accordingly.

The Orders of the Day being read:

Ordered, That the Consideration of her Majesty's Gracious Answer to the Address of this House of *Saturday* last, relating to the Writs of Error therein mentioned, be adjourned till To-morrow Morning.

Mercurii 28 die Februarii, 1704.

Mr. *Bromley* reported, That the Members appointed to search the Journals of the House of Lords, what Proceedings have been in that House, in relation to the five Persons committed to *Newgate* for Breach of the Privilege of this House, had searched the same accordingly, and had taken thereout what they found relating to the same; and also Copies of two Petitions of the said Persons; which he read in his Place, and afterwards delivered in at the Table, where the same were read, and are as follow, *viz.*

Die Lunæ, 26 *Februarii*, 1704.

Upon reading the Petition of *Daniel Horne*, *Henry Basse*, and *John Paton*, Jun. as also the Petition of *John Paty*, and *John Oviat*, Prisoners in *Newgate*, in relation to some Proceedings for obtaining the Writs of Error, and praying (amongst other Things) the Protection of this House for their Counsel and Agents:

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That the said Petitions shall be taken into Consideration To-morrow at Twelve o'Clock, and all the Lords summoned to attend; as also the Judges in Town, who are to come prepared to speak to the Point, Whether a Writ of Error be a Writ of Right, or a Writ of Grace? And that the Petitioners have Notice, That when they send to this House the Names of their Counsel and Agents they desire to be protected, they shall have the Protection of this House for them.

In pursuance of the Order of this Day made, *Daniel Horne*, *Henry Basse*, *John Paton*, Jun. *John Paty*, and *John Oviat*, Prisoners in *Newgate*, sent the Names of their Counsel and Agents, *viz.*

Jamas Mountague, Esq. }
Nicholas Lechmere, }
Alexander Denton, } Counsellors at Law.
Francis Page, }

William Lee, }
John Harris, } Attornies at Law.

Whereupon,

It is Ordered by the Lords Spiritual and Temporal in Parliament Assembled, That *James Mountague*, Esq. *Nicholas Lechmere*, *Alexander Denton*, and *Francis Page*, Counsellors at Law, and *William Lee*, and *John Harris*, Attornies at Law, shall, and they have hereby the Protection and Privilege of this House, in the advising, applying for, and prosecuting the said Writs of Error; and that all Keepers of Prisons, and Gaolers, and all Serjeants at Arms, and other Persons whatsoever, be, and they are hereby (for, or in respect of any the Causes aforesaid) strictly prohibited from arresting, imprisoning, or otherwise detaining or molesting, or charging the said *James Mountague*, Esq. *Nicholas Lechmere*, *Alexander Denton*, *Francis Page*, *William Lee*, and *John Harris*, or either of them; as they and every of them will answer the contrary to this House.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament Assembled.

The humble Petition of Daniel Horne, Henry Basse, *and* John Paton, *Jun.*

Sheweth,

THAT your Petitioners having a Right to vote at the Election of Members to serve in Parliament for the Borough of *Aylesbury*, were refused their Votes, to their great Wrong and Damage.

That the Lords having given Judgment in the Case of *Ashby* and *White*, *viz.* That by the known Laws of this Kingdom, every Freeholder, or other Person, having a Right to give his Vote at the Election of Members to serve in Parliament, and being wilfully denied or hindered so to do by the Officer who ought to receive the same, may maintain an Action in the Queen's Courts against such Officer, to assert his Right, and recover Damages for the Injury; your Petitioners thereupon brought the like Actions in their own Cases.

That they have for so doing been committed to *Newgate*, by Virtue of a Warrant from the Speaker of the House of Commons.

That your Petitioners have endeavoured to obtain their Liberty by such legal Methods as by their Counsel they have been advised, without Success; so that they have been deprived of their Liberty for about Twelve Weeks, for no other Reason, but the endeavouring to pursue their legal Remedies, according to the Judgment of this Honourable House.

Wherefore your Petitioners humbly beseech your Lordships to take the Premisses into Consideration, and to do therein as to your great Wisdoms you shall think fit.

And your Petitioners, as in Duty bound shall ever pray, &c.

Daniel Horne,
Henry Basse,
John Paton, *Jun.*
His + Mark.

To the Right Honourable the Lords Spiritual and Temporal, in Parliament Assembled.

The humble Petition of John Paty, *and* John Oviat.

Sheweth,

THAT your Petitioners having a Right to vote at the Election of Members to serve in Parliament for the Borough of *Aylesbury*, were refused their Votes, to their great Wrong and Damage.

That the Lords having given Judgment in the Case of *Ashby* and *White*, *viz.* That by the known Laws of this Kingdom, every Freeholder, or other Person, having a Right to give his Vote at the Election of Members to serve in Parliament, and being wilfully denied or hindered so to do by the Officer who ought to receive the same, may maintain an Action in the Queen's Courts against such Officer, to assert his Right, and recover Damages for the Injury; your Petitioners thereupon brought the like Actions in their own Cases.

That they have for so doing been committed to *Newgate*, by Virtue of Warrants from the Speaker of the House of Commons, Copies whereof are annexed.

That they did, by the Advice of their Counsel, on the 5th Day of this Instant *February*, move for their Writs of *Habeas Corpus*, directed to the Keeper of *Newgate*, to bring your Petitioners before Her Majesty's Court of *Queen's-Bench*: Whereupon the said Court, *viz.* Mr. Justice *Powell*, Mr. Justice *Powys*, and Mr. Justice *Gould*, did grant the said Writs, directing the same to be made returnable on the 10th Day of *February* aforesaid, notwithstanding that your Petitioners said Counsel did insist, That the same was an unusual Return, and prejudicial to your Petitioners; on which said Day of Return, your Petitioners Counsel did argue on their Behalf, That by Law they ought to be discharged; but by the Opinion of the said three Judges, they were remanded to the said Prison.

That your Petitioners being thereupon advised, there was a manifest Error in the said Judgment, and that they were properly relievable by bringing a Writ of Error returnable before Her Majesty in this High Court of Parliament, they did severally exhibit their Petitions to Her Majesty, setting forth the Proceedings upon the said Writs of *Habeas Corpus*; and humbly pray'd, That a Writ of Error might be granted to them respectively returnable in this High Court.

That your Petitioners have not been able as yet to obtain Her Majesty's Warrant for authorising the Cursitor to make out the said Writs of Error, as is usual in such Cases.

* Though the Commons had resolved before to take Her Majesty's Answer into Consideration, yet being apprehensive lest Her Majesty should grant the Writs of Error, whereby the Five *Aylesbury*-Men might be discharged from their Imprisonment, they ordered them to be removed from *Newgate*, and taken into the Custody of their Serjeant at Arms; which Order was executed at Midnight, with such Circumstances of Severity and Terror, as have been seldom exercised towards the greatest Offenders. *Annals of Queen* Anne, Vol. III. p. 189.

That

That your Petitioners being advised, That a Writ of Error is a Writ of Right, do humbly beseech your Lordships to take the Premisses into Consideration, and to give such Directions thereupon, as to your Lordships shall seem just: And your Petitioners do further pray, That your Lordships will be pleased to give the Protection of this House to your Petitioners Counsel and Agents, employed by them in the advising, applying for, and prosecuting the said Writs of Error; without which, they refuse to assist your Petitioners.

And your Petitioners, as in Duty bound, shall ever pray, &c.

John Paty,
His H *Mark.*
John Oviat,
His O *Mark.*

The Dates of the Warrants annexed to the Petition.

Martis 5 *die Decembris*, 1704. for *John Oviat.*
Veneris 2 *die Februarii*, 1704. *Ditto.*
Martis 5 *die Decembris*, 1704. for *John Paty.*
Veneris 2 *die Februarii*, 1704. *Ditto.*

The Serjeant at Arms being called upon to give an Account what he had done pursuant to the Orders of the House on *Monday* last, since the Account he gave Yesterday:

He gave the House an Account accordingly; That he had found Mr. *Denton* at his own Chamber, and had him in Custody; but that he could not find the other Persons.

A Message from the Lords, by Mr. Justice *Tracy*, and Mr. Baron *Smith*.

Mr. Speaker, The Lords desire a present Conference with this House in the Painted Chamber, about some antient, fundamental Liberties of the Kingdom.

Resolved, That this House doth agree to meet the Lords at a present Conference as desired.

And the Messengers were called in again; and *Mr. Speaker* acquainted them therewith.

Then Managers were appointed, who went to the Conference.

And being returned,

The Lord Marquis of *Hartington* reported the Conference, and that it was managed by the Earl of *Sunderland*, who expressed himself as followeth:

That the Lords have desired this Conference with the House of Commons, in order to a good Correspondence between the Two Houses, which they will always endeavour to preserve. When either House of Parliament have apprehended the Proceedings of the other to be liable to Exception, the antient Parliamentary Method has been to ask a Conference, it being ever supposed, that when the Matters are fairly laid open, and debated, that which may have been amiss will be rectified, or else the House that made the Objections will be satisfied, that their Complaint was not well grounded.

Such Hopes as these have induced the Lords to command us to acquaint you, That upon Consideration of the Petition of Daniel Horne, Henry Basse, *and* John Paton, *Junior, and also of the Petition of* John Paty *and* John Oviat, *complaining to the House of Lords, That they have been Prisoners in* Newgate *for about Twelve Weeks, upon several Warrants, signed by the Speaker of the House of Commons, bearing Date the* 5*th of* December *last, for their having commenced and prosecuted Actions at Common Law against the late Constables of* Aylesbury, *for not allowing their Votes, at an Election of Members to serve in Parliament; which Actions, they alledged, they were encouraged to bring, by reason of a Judgment given in Parliament upon a Writ of Error brought in the last Session by one* Ashby *against* White, *and others; and also representing by the same Petitions, what had been done by them respectively since their said Commitment, in order to obtain their Liberty, and praying the Consideration of the House of Peers upon the whole Matter; and also upon Consideration of a printed Paper, entitled,* The Votes of the House of Commons, *signed with the Speaker's Name, and dated the* 24*th of this Instant* February; *the House of Lords found themselves obliged to come to several Resolutions, which they have commanded us to communicate to you at this Conference*; and are as follow:

1. "It is Resolved by the Lords Spiritual and Temporal in Parliament assembled, That neither House of Parliament hath any Power, by any Vote, or Declaration, to create to themselves any new Privilege that is not warranted by the known Laws and Customs of Parliament.

Resolved,

2. "That every Freeman of *England*, who apprehends himself to be injured, has a Right to seek Redress by Action at Law; and that the Commencing and Prosecuting an Action at Common Law against any Person, (not entituled to Privilege of Parliament) is no Breach of the Privilege of Parliament.

Resolved,

3. "That the House of Commons, in committing to *Newgate Daniel Horne, Henry Basse*, and *John Paton*, Junior, *John Paty* and *John Oviat*, for Commencing and Prosecuting an Action at Common Law, against the late Constables of *Aylesbury*, for not allowing their Votes in Election of Members to serve in Parliament, upon Pretence that their so doing was contrary to a Declaration, a Contempt of the Jurisdiction, and a Breach of the Privilege of that House, have assumed to themselves alone a Legislative Authority, by pretending to attribute the Force of a Law to their Declaration, have claimed a Jurisdiction not warranted by the Constitution, and have assumed a new Privilege, to which they can shew no Title by the Law and Custom of Parliament; and have thereby, as far as in them lies, subjected the Rights of *Englishmen*, and the Freedom of their Persons, to the arbitrary Votes of the House of Commons.

Resolved,

4. "That every *Englishman*, who is imprisoned by any Authority whatsoever, has an undoubted Right, by his Agents, or Friends, to apply for, and obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due Course of Law.

Resolved,

5. "That for the House of Commons to censure, or punish any Person, for assisting a Prisoner to procure a Writ of *Habeas Corpus*, or by Vote, or otherwise, to deter Men from soliciting, prosecuting, and pleading upon such Writ of *Habeas Corpus*, in Behalf of such Prisoner, is an Attempt of dangerous Consequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the necessary Assistance to the Prisoner, upon a Commitment of the House of Commons, which has ever been allowed upon all Commitments by any Authority whatsoever.

Resolved,

6. "That a Writ of Error is not a Writ of Grace, but of Right, and ought not to be denied to the Subject, when duly applied for (though at the Request of either House of Parliament), the Denial thereof being an Obstruction of Justice, contrary to *Magna Charta*."

In these Resolutions, the House of Lords have expressed that Regard and Tenderness which they have always had, and will ever maintain for the Rights of the People of England, *and for the Liberties of their Persons; and also their Zeal against all Innovations to the Prejudice of the known Course of Law, whereupon the Happiness of our Constitution does depend: And they hope that, upon Recollection, the House of Commons will be of the same Opinion in all the Particulars Resolved by the Lords, and agree with their Lordships therein.*

Ordered,

That the said Report be taken into Consideration To-morrow Morning.

Jovis 1 *Die Martii*, 1704.

The House (according to Order) proceeded to take into Consideration the Report from the Conference with the Lords Yesterday.

Ordered,

That it be referred to the Managers that managed the last Conference, to draw up what is proper to be offered to the Lords at the next Conference; and that they do withdraw into the Speaker's Chamber, and do sit *de Die in Diem*, and have Power to send for Persons, Papers, and Records.

Sabbati 3 *Die Martii*, 1704.

The Earl of *Dysert* reported from the Committee appointed to examine what Persons have been concerned in soliciting, prosecuting, or pleading upon the Writs of *Habeas Corpus*, or Writs of Error, on the Behalf of the Persons committed to *Newgate* for Breach of the Privileges of this House, or what other Persons have promoted or abetted the same: That upon the Examination of Witnesses, it appeared to the Committee, That one Mr. —— *Clifton* being summoned to attend the said Committee, did not appear, tho' his Wife owned he had the said Summons, and told her he would attend accordingly. Mr. *Smith*, one of the Officers of the Prison of *Newgate*, said, That the said Mr. *Clifton* used to come often to the Prison, to visit the five Prisoners committed thither by this House; and he has received of him about fifteen Pounds for their Lodging, and about five Pounds more of the Turnkey, that has been left with him upon the same Account, by Persons unknown to him. That there is nothing owing for their Lodging but since *Saturday* Night. That they paid fifty Shillings *per* Week for their Lodging, and used to provide their Diet from the Sutler's. And that the Committee having issued out several Summons for Mr. *Henry Cesar*, one of the Cursitors of *London* and *Middlesex*, to attend them, in order to give the Committee an Account what Persons had applied to him to make out Writs of Error on the Behalf of *John Oviat*, and the other Prisoners lately committed by this House to *Newgate*: It appeared (upon the Examination of *Kingham* the Messenger, who served the said Summons), That he left a Copy of the Summons on *Tuesday* Night at Mr. *Cesar*'s Chamber at *Symonds-Inn*, with his Laundress, he not being within. That the said Messenger, since, left a second Summons at the said Mr. *Cesar*'s Chamber, who has not obeyed the same.

And a Debate arising in the House upon the said Report;

And a Motion being made, and the Question being put, That the Debate be adjourned;

It passed in the Negative.

Resolved, That it appears to this House, That Mr. *Clifton* having been summoned to attend a Committee of this House, and not attending thereupon, is guilty of a Contempt, and of a Breach of the Privilege of this House.

Ordered, That the said Mr. *Clifton* be, for his said Contempt and Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

Resolved, That it appears to this House, That Mr. *Henry Cesar*, one of the Cursitors of *London* and *Middlesex*, having been summoned to attend a Committee of this House, and not attending thereupon, is guilty of a Contempt, and of a Breach of the Privilege of this House.

Ordered, That the said Mr. *Henry Cesar* be, for his said Contempt and Breach of Privilege, taken into the Custody of the Serjeant at Arms attending this House.

Martis 6 *die Martii*, 1704.

The Serjeant at Arms attending this House acquainted the House, That a Person had this Morning brought him a Writ of *Habeas Corpus*, under the Great Seal, for Mr. *Mountague* (in his Custody by Order of this House), to be brought (as he was informed) before the Lord-Keeper of the Great Seal of *England*: And he delivered the Writ (under Seal) in at the Table. And it appearing by the Label to be returnable *immediatè*, but not before whom he was to be brought, nor any Officer's Name thereto, the Writ was opened by the Clerk, and read, and is as followeth:

Anna Dei Gratiâ Ang' Sco' Fran' & Hibern' Regina Fidei Defensor, &c. Samueli Powel Ar' Serv' ad Arma attenden' Honorab' Dom' Commun' ejus Deputato & Deputatis Salutem. Precipimus vobis & cuilibet vestrum quod Corpus Jacobi Mountague Ar' nuper capt' & in Custod' vestra vel alicujus vel unius vestrum ut dicitur detent' sub salvo & securo Conduct' una cum Die & Causa Captionis & Detentionis pred' Jacobi Mountague quocunq; nomine idem Jacob' Mountague censeatur in eadem habeatis seu aliquis vel unus vestrum habeat cor' predilecto & fidel' nostro prehonorab' Nathan Wright Mil' Dom' Custod' Mag' Sigil' nostri Angl' apud Dom' Mansional' suam in Parochia Sancti Egidii in Campis in Com' Mid' immediatè post Reception' hujus Brevis ad faciend' subjiciend' & recipiend' ea omnia & singula que dictus Dominus Custos Magni Sigil' nostri Angl' de eo tunc & ibidem Cons'

in hac parte & habeatis ſeu aliquis vel unus veſtrum habeat ibi hoc Breve. Teſte meipſa apud Weſtm' ſexto Die Martii Anno Regni noſtri tertio.

The Label. *Samuel' Powel Ar' Servien' ad Arma, &c. H. Corp' pro Mountague Ar' R. immediatè.*

Endorſed, *Per Statutum triceſim' prim' Caroli Secundi Regis.*

N. Wright, *C. S.*

The Serjeant alſo acquainted the Houſe, That he heard there was another *Habeas Corpus* granted for Mr. *Denton*, in his Cuſtody alſo.

While the Matter (upon occaſion of the ſaid forementioned Writ) was debating, the Serjeant acquainted the Houſe, That the other Writ of *Habeas Corpus* was juſt ſerved upon his Deputy, who had Mr. *Denton* in his Cuſtody: And he alſo delivered the ſame in at the Clerk's Table, where it was read; and was the ſame, *mutatis mutandis*, with the former.

And the Precedents of what was done in the Year 1675 were (by Order) read: And ſeveral Members mentioned, upon their Memory, what was done in the Year 1680, in the Caſe of one Mr. *Sheridon*.

But the Houſe were of Opinion, That any Perſon committed by the Houſe of Commons was not bailable, within the Act of *Habeas Corpus* of 31 *Car.* II. But came not then to any Reſolution.

Martis 6 die Martii, 1704.

Mr. *Bromley* reported, from the Committee appointed to draw up what is proper to be offered to the Lords at the next Conference, That they had drawn up the ſame accordingly, which they had directed him to report to the Houſe; which he read in his Place, and afterwards delivered in at the Clerk's Table, where the ſame was read, and (with ſome Amendments) agreed unto by the Houſe: And the ſame is as follows, *viz.*

The Commons have deſired this Conference with your Lordſhips, in order to preſerve that good Correſpondence between the Two Houſes, which the Commons ſhall always ſincerely endeavour to maintain, and which is ſo particularly neceſſary at this Time of common Danger, that the Commons would not engage in any thing that looks like a Diſpute with your Lordſhips, were it not for the Neceſſity of vindicating, from a manifeſt Invaſion, the Privileges of all the Commons of *England*, (with which the Houſe of Commons is entruſted) even thoſe Privileges which are eſſential not only to the Well-being, but to the very Being of an Houſe of Commons; and the preventing the ill Conſequences of thoſe Miſunderſtandings, which, if they are not ſpeedily removed, muſt otherwiſe interrupt the happy Concluſion of this Seſſion, and the Proceedings of all future Parliaments.

It was this Conſideration alone has ſo long prevailed with the Houſe of Commons, not to inſiſt on due Reparation for thoſe violent and unparliamentary Attempts made by your Lordſhips upon their Rights and Privileges at the End of the laſt Seſſion of Parliament, but to apply themſelves to the giving the ſpeedieſt Diſpatch to thoſe Supplies which her Majeſty ſo earneſtly recommended from the Throne, which are ſo neceſſary to enable her Majeſty to purſue the Advantages that have been obtained againſt the common Enemy by the great and glorious Succeſſes of her Majeſty's Arms; and which are now delayed in your Lordſhips Houſe, in ſo unuſual a Manner.

The Commons do agree to your Lordſhips, That when either Houſe of Parliament have apprehended the Proceedings of the other to be liable to Exception, the ancient Parliamentary Method has often been to aſk a Conference; becauſe it ought to be ſuppoſed, That when the Matters are fairly laid open and debated, that which may have been amiſs will be rectified, or elſe the Houſe that made the Objections will be ſatisfied that their Complaint was not well grounded. But your Lordſhips ſeem ſo little to deſire to have Matters fairly laid open and debated, that, to the great Surprize of the Commons, when your Lordſhips had invited them to a Conference, *about ſome ancient, fundamental Liberties of the Kingdom*, they found only the ancient and fundamental Rights of the Houſe of Commons, and their Proceedings, cenſured, and treated in a Manner unknown to former Parliaments; and that your Lordſhips had anticipated all Debates, by delivering poſitive Reſolutions; and theſe Proceedings of your Lordſhips grounded only upon the Petitions of Criminals that had fallen under the juſt Cenſure and Diſpleaſure of the Commons, and upon a printed Paper, which was not regularly before your Lordſhips.

Though this Manner of Proceeding, as well as the Matters of your Lordſhips Reſolutions, might have juſtified the Houſe of Commons in refuſing to continue Conferences with your Lordſhips, as their Predeceſſors have done upon leſs Occaſions; and though the Commons cannot ſubmit their Privileges to be determined or examined by your Lordſhips, upon any Pretence whatſoever; yet, that nothing may be wanting on their part to induce your Lordſhips to retract theſe Reſolutions, they proceed to take them into their Conſideration.

Your Lordſhips firſt Reſolution is, *viz.*

That neither Houſe of Parliament hath any Power, by any Vote or Declaration, to create to themſelves any new Privilege, that is not warranted by the known Laws and Cuſtoms of Parliament.

As the Commons have guided themſelves by this Rule, in aſſerting their Privileges, ſo they wiſh your Lordſhips had obſerved it in all your Proceedings. This had entirely taken away all Colour for Diſputes between her Majeſty's Two Houſes of Parliament, and many juſt Occaſions of Complaint from thoſe the Commons repreſent. This would effectually put an End to that Encroachment in Judicature, ſo lately aſſumed by your Lordſhips, and ſo often complained of by the Commons; we mean the Hearing of Appeals from Courts of Equity in your Lordſhips Houſe. This would have hindered the bringing of original Cauſes before your Lordſhips, and your unwarrantable Proceedings upon the Petition of *Thomas* Lord *Wharton*, complaining of an Order of the Court of *Exchequer*, bearing Date the 15th of *July*, 1701, for filing the Record of a Survey of the Honour of *Richmond* and Lordſhip of *Middleham* in the County of *York*; an Attempt which (contrary to the antient legal Judicature of Parliament heretofore exerciſed, *for the Relief of the Subject oppreſſed by the Power of the great Men of the Realm*) was in favour of one of your own Body to ſuppreſs a publick Record, which all her Majeſty's Subjects had an undoubted Right to make uſe of; an Attempt that tends to render all Fines and Recoveries, and other Records (upon which Eſtates and Titles depend) precarious; and conſequently ſubjects the Rights and Properties of all the Commons of *England* to an illegal and arbitrary Power.

A due Regard to the ſame Rule would have prevented your Lordſhips entertaining the Petitions mentioned at the laſt Conference, which ſet forth, *That the Lords having given Judgment in the Caſe of* Aſhby *and* White, viz. *That by the known Laws of this Kingdom, every Freeholder, or other Perſon, having a Right to give his Vote at the Election of Members to ſerve in Parliament, and being wilfully denied or hindered ſo to do by the Officer who ought to receive the ſame, may maintain an Action in the Queen's Courts, againſt ſuch Officer, to aſſert his Right, and recover Damages for the Injury: The Petitioners thereupon brought the like Actions in their own Caſes.*

Whereby an extrajudicial Vote of your Lordſhips is ſtated as a Judgment of Parliament and Standing Law in that Caſe, your Lordſhips having no Foundation for the entertaining ſuch Petitions, unleſs, that after having aſſumed to yourſelves the Hearing of Appeals from Courts of Equity, you would now bring Appeals to your Lordſhips from the Proceedings of the Commons, who are not accountable to your Lordſhips for them.

Your Lordſhips Second Reſolution is,

That every Freeman of *England*, who apprehends himſelf to be injured, has a Right to ſeek Redreſs by Action at Law; and that the commencing and proſecuting an Action at Common Law, againſt any Perſon (not entitled to Privilege of Parliament), is no Breach of the Privilege of Parliament.

To which the Commons ſay, That every Freeman, and every Subject of *England*, has a Right to ſeek Redreſs for any Injury; but then ſuch Perſon muſt apply for that Redreſs to the proper Court, which hath by antient Laws and Uſage the Cognizance of ſuch Matters: For ſhould your Lordſhips Reſolution be taken as an univerſal Propoſition, all Diſtinction of the ſeveral Courts, *viz.* Common-Law, Equity, Eccleſiaſtical, Admiralty, and other Courts, will be deſtroy'd; and in this Confuſion of Juriſdiction, the High Court of Parliament is involved in your Lordſhips Reſolution.

However, the Commons conceive it no Wonder your Lordſhips ſhould favour the univerſal Propoſition, That all Rights whatſoever are to be redreſſed by Actions at Law, when your Lordſhips pretend to have the laſt Reſort in Caſes of Judicature by Writs of Error; ſo that your Lordſhips are, in this, only extending your own Judicature, under the Colour of a Regard and Tenderneſs for the Rights of the People, and Liberties of their Perſons.

The Commons are ſurpriſed to find your Lordſhips aſſert, That the commencing and proſecuting an Action againſt a Perſon not entitled to Privilege of Parliament, is no Breach of the Privilege of Parliament, ſince it is moſt certain, That to commence and proſecute an Action which would bring any Matter or Cauſe ſolely cognizable in Parliament, to the Examination and Determination of any other Court, is more deſtructive to the Privileges of Parliament, than to commence and proſecute an Action againſt a Perſon only who is entitled to ſuch Privilege.

That ſome Matters and Cauſes are ſolely cognizable in Parliament, hath ever been allow'd by the ſame Judges of Law, and is evident from many Precedents; and to bring ſuch Cauſes to the Determination of other Courts, ſtrikes at the very Foundation of all Parliamentary Juriſdiction, which is the only Baſis and Support even of that Perſonal Privilege to which the Members of either Houſe of Parliament are entitled; and conſequently, to commence and proſecute any Action, whereby to draw ſuch Cauſes to the Examination of other Courts, is equally a Breach of the Privilege of Parliament, whether the Defendant, againſt whom ſuch Action is brought, is entitled to the Privilege of Parliament or not, which, beſides the Nature and Reaſon of the Thing, is fully evident from the conſtant Uſage of each Houſe of Parliament, in committing for Contempts only againſt their reſpective Bodies, as appears from many Precedents upon the Journals of both Houſes.

Your Lordſhips Third Reſolution is thus, *viz.*

That the Houſe of Commons, in committing to *Newgate Daniel Horne*, *Henry Baſſe*, and *John Paton*, Junior, *John Paty*, and *John Oviat*, for commencing and proſecuting an Action at Common Law againſt the Conſtables of *Ayleſbury*, for not allowing their Votes in Election of Members to ſerve in Parliament, upon Pretence, that their ſo doing was contrary to a Declaration, a Contempt of the Juriſdiction, and a Breach of the Privilege of that Houſe, have aſſumed to themſelves alone a Legiſlative Authority, by pretending to attribute the Force of a Law to their Declaration; have claim'd a Juriſdiction not warranted by the Conſtitution; and have aſſumed a new Privilege, to which they can ſhew no Title by the Laws and Cuſtoms of Parliament; and have thereby, as far as in them lies, ſubjected the Rights of *Engliſhmen*, and the Freedom of their Perſons, to the arbitrary Votes of the Houſe of Commons.

In Anſwer to which, the Commons affirm, That the ſaid Commitment is juſtified by antient Precedents, and by the Uſage and Cuſtoms of Parliament, which is the Law of Parliament, and the Rule by which either Houſe ought to govern their Proceedings; and that the Terms of aſſuming to themſelves alone a Legiſlative Authority, or attributing the Force of a Law to their Declaration, of claiming a Juriſdiction not warranted by the Conſtitution, of aſſuming a new Privilege, to which they can ſhew no Title by the Law and Cuſtom of Parliament; and of arbitrary

arbitrary Votes; are more applicable to this Reſolution of your Lordſhips, which hath no one Precedent to juſtify it.

According to the known Laws and Uſage of Parliament, it is the ſole Right of the Commons of *England*, in Parliament aſſembled (except in Caſes otherwiſe provided for by Act of Parliament), to examine and determine all Matters relating to the Right of Election of their own Members.

And, according to the known Laws and Uſage of Parliament, neither the Qualification of any Elector, nor the Right of any Perſon elected, is cognizable or determinable elſewhere, than before the Commons of *England* in Parliament aſſembled, excepting ſuch Caſes as are ſpecially provided for by Act of Parliament.

And were it otherwiſe, the Mayors, Bailiffs, and other Officers, who are obliged to take the Poll at Elections, and make a Return thereupon, would be expoſed to Multiplicity of Actions, vexatious Suits, and inſupportable Expences; and ſuch Officers would be ſubjected to different and independent Juriſdictions, and inconſiſtent Determinations in the ſame Caſe, without Relief.

And the Exerciſe of this Power by the Houſe of Commons is warranted by a long unconteſted Poſſeſſion, and confirmed by the Act that paſſed 7 & 8 *Guil.* III. *Cap.* 7. And the Houſe of Commons muſt be owned to be the only Juriſdiction that can allow the Elector his Vote, and ſettle and eſtabliſh the Right of it; the laſt Determination in that Houſe being, by that Act of Parliament, declared to be the ſtanding Rule for the Right of Election in each reſpective Place. Nor can any Elector ſuffer either Injury, or Damage, by the Officer's denying his Vote: For when the Elector hath named the Perſon he would have to repreſent him, his Vote is effectually given, both as to his own Right and Privilege, and as it avails the Candidate in his Election; and is ever allowed, when it comes in Queſtion in the Houſe of Commons, whether the Officer had any Regard to it or no.

In the Beginning of the Parliament, held 28 *Eliz. Mr. Speaker* acquaints the Houſe, That he had received by the Lord Chancellor Her Majeſty's Pleaſure; That ſhe was ſorry the Houſe was troubled with the Matter of determining the chooſing and returning of Knights for the County of *Norfolk*: That it was improper for the Houſe to meddle in it, which was proper for the Lord Chancellor, whence the Writs iſſued out, and whither they were returnable: That Her Majeſty had appointed the Lord Chancellor to confer therein with the Judges; and, upon examining the ſame, to ſet down ſuch Courſe as to Juſtice and Right ſhould appertain.

Nov. 9. A Committee was appointed to examine and ſtate the Circumſtances of the Return of the Knights for the County of *Norfolk*.

And on *Friday*, *Nov.* 11. Mr. *Cromwell* reports the Caſe of the *Norfolk* Election very largely, in which Report are theſe following Reſolutions:

1. That the ſaid Writ was duly executed.
2. That it was a pernicious Precedent, that a New Writ ſhould iſſue without the Order of this Houſe.
3. That the diſcuſſing, or judging of this, and ſuch like Differences, only belonged to the ſaid Houſe.
4. That tho' the Lord Chancellor and Judges are competent Judges in their Courts, they are not ſo in Parliament.
5. That it ſhould be entered in the Journal-Book of the Houſe, That the firſt Election is good; and that the Knights then choſen were received and allowed as Members of the Houſe; not out of any Reſpect the Houſe had, or gave to the Lord Chancellor's Judgment therein paſſed, but merely by Reaſon of the Reſolution of the Houſe itſelf, by which the ſaid Election had been approved.
6. That there ſhould be no Meſſage ſent to the Lord Chancellor, not ſo much as to let him know what was done therein; becauſe it was derogatory to the Power and Privilege of the ſaid Houſe.

It alſo appears, That Sir *Edmond Anderſon*, Lord Chief Juſtice of the *Common Pleas*, was acquainted, That the Explanation and Ordering of the Cauſe, appertained only to the Cenſure of the Houſe of Commons, not to the Lord Chancellor and the Judges; and that they ſhould take no Notice of their having done any thing in it.

Accordingly Mr. *Farmer* and Mr. *Greſham* were received into the Houſe, and took the Oaths; being admitted only upon the Cenſure of the Houſe, not as allowed by the Lord Chancellor, or the Judges; and ſo ordered to be ſet down and entered by the Clerk.

And this Right of the Commons to determine their own Elections, has never been diſputed ſince the Caſe of Sir *Francis Goodwin*, 1 *Jac.* I. when the Lords would have enquired into the Proceedings of the Houſe of Commons upon his Election: But the Commons then told their Lordſhips, "It did not ſtand with the Honour of the Houſe to give Account "to their Lordſhips of any their Proceedings or Doings."

And in the Reaſons of their Proceedings in that Caſe, which they laid by Petition before the King, among other Things, they ſay, "They are "a Part of the Body to make New Laws; yet, for any Matter of Pri"vileges of their Houſe, they are, and ever have been, a Court of them"ſelves, of ſufficient Power to diſcern and determine without the Lords, "as the Lords have always uſed to do theirs without them.

In which Reaſons, as well as in their Apology afterwards to that Prince, the Houſe of Commons did above a hundred Years ſince, ſo clearly, and with ſo much Strength of Reaſon, aſſert their Right in the Matter of the Election of their Members. The Commons think it their Duty to reſiſt all Attempts whatſoever to invade them.

And upon this Occaſion it may not be improper to cite the Opinion the Houſe of Commons had of the Judges intermeddling in Matters of their Elections, as they have delivered it in the aforeſaid Apology, in theſe Words, *viz.*

> Neither thought we that the Judges Opinions (which yet in due Place we greatly reverence, being delivered with the Common Law), which extends only to inferior and ſtanding Courts, ought to bring any Prejudice to this High Court of Parliament; whoſe Power, being above the Law, is not founded on the Common Laws, but they have their Rights and Privileges peculiar to themſelves.

When the Earl of *Shaftesbury* was Lord Chancellor, Writs iſſued, during a Prorogation of Parliament, for electing Members in the Room of thoſe that were dead: The King himſelf was ſo cautious, as to the Regularity of this Proceeding, and had ſo much Regard to the Privileges of the Houſe of Commons, that at the next Seſſion of Parliament, 5 *Feb.* 1672, he ſpoke to the Commons, from the Throne, in theſe Words:

> One Thing I forgot to mention, which happened during this Prorogation; I did give Orders for the iſſuing ſome Writs for the Election of Members inſtead of thoſe that are dead, that the Houſe might be full at their Meeting: And I am miſtaken, if this be not according to former Proceedings. But I deſire you will not fall to other Buſineſs, 'till you have examined that Particular; and I doubt not but Precedents will juſtify what is done: I am as careful of all your Privileges, as of my own Prerogative.

February 6, 1672. The Houſe of Commons took that Matter into Conſideration; and ſeveral Precedents being cited, and the Matter at large debated, and the general Senſe and Opinion of the Houſe being, "That, "during the Continuance of the High Court of Parliament, the Right "and Power of iſſuing Writs for electing Members to ſerve in this "Houſe, in ſuch Places as are vacant, is in this Houſe, who are the pro"per Judges alſo of Elections, and Returns of their Members:"

Thereupon it was Reſolved,

"That all Elections, upon the Writs iſſued ſince the laſt Seſſion, are "void; and that *Mr. Speaker* do iſſue out his Warrant to the Clerk of "the Crown, to make out New Writs for thoſe Places."

[*Which was done accordingly.*

No other Court than the Houſe of Commons hath ever had the Determination of the Elections, or any Cognizance of ſuch Cauſes, except where by Acts of Parliament directed: And ſuch an Action as thoſe againſt the late Conſtables of *Aylesbury*, to bring the Right of Voting in an Election in Queſtion in the Courts of Law, is a New Invention, never heard of before: which (as New Devices in the Law are generally attended with Inconveniencies and Abſurdities) was plainly to ſubject the Elections of all the Members of the Houſe of Commons to the Determination of other Courts.

This undoubted Privilege and Juriſdiction the Commons think will warrant theſe Commitments, if the late Declaration (which is agreeable to, and cannot leſſen their ancient Right) had never been made.

For it is the ancient and undoubted Right of the Houſe of Commons, To commit for Breach of Privilege: And the Inſtances of their committing Perſons, not Members of the Houſe, for Breach of Privilege, and that to any Her Majeſty's Priſons, are ſo ancient, ſo many, and ſo well known to your Lordſhips, that the Commons think it needleſs to produce them.

And it being the Privilege of the Houſe of Commons, to have the ſole Examination and Determination of all Cauſes relating to their Elections, as aforeſaid:

It follows, That any Attempt to draw any ſuch Cauſes to the Determination of any other Court, is a Breach of the Privilege of the Houſe of Commons; for which the Perſon offending may be committed by the Commons.

And here we cannot but take Notice of that unreaſonable, as well as unnatural Inſinuation, whereby your Lordſhips endeavour to ſeparate the Intereſt of the People from their Repreſentatives in Parliament, who pretend to no Privileges, but upon their Account, and for their Benefit; and are ſorry to ſay, they are thus ſeverely reflected on by your Lordſhips, for no other Reaſon, but for their interpoſing to preſerve the Rights of the People, and their Liberties, from your Lordſhips arbitrary Determinations.

Your Lordſhips Fourth Reſolution is,

> That every *Engliſhman*, who is impriſoned by any Authority whatſoever, has an undoubted Right, by his Agents or Friends, to apply for, and obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due Courſe of Law.

The Commons do not deny that every *Engliſhman*, who is impriſoned, by any Authority whatſoever, has an undoubted Right to apply, by his Agents or Friends, in order to procure his Liberty by due Courſe of Law; provided ſuch Application be made to the proper Place, and in a proper Manner: As upon the Commitments of the Houſe of Commons (which ſometimes are not, as other Commitments, in order to bring to Trial; but are, in Caſes of Breach of Privilege and Contempt, the proper Puniſhment of the Houſe of Commons) the Application ought to be to that Houſe.

The Commons are ſo willing to allow and encourage every *Engliſhman* to apply, by his Friends or Agents, to obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due Courſe of Law, that they have not cenſured any Perſon merely for applying for ſuch Writ of *Habeas Corpus*, even in Caſes where by due Proceſs of Law the Priſoners cannot be diſcharged. For the Commons muſt obſerve, that in many Caſes a Priſoner cannot, upon a Writ of *Habeas Corpus*, obtain his Liberty; as in Caſes of Commitment in Execution, or for Contempt to any Court of Record, or by Virtue of Meſne Proceſs, or the like; and in the Act of *Habeas Corpus*, ſeveral Caſes are expreſly excepted: And that no Perſon, committed for any Contempt, or Breach of the Privilege, by the Houſe of Commons, can be diſcharged upon a Writ of *Habeas Corpus*, or by any other Authority than that of the Houſe, during that Seſſion of Parliament, is plain from the following Precedents:

23 *Maii*, 1 *Jac.* I.

Jones, the Priſoner, to be ſent for hither, and to attend his Diſcharge from the Houſe.

That the Priſoners committed by us, cannot be taken from us, and committed by any other.

In *May* 1675, *the Houſe of Commons having Reſolved*, That there lay no Appeal to the Judicature of the Lords, from Courts of Equity; and that no Member of the Houſe ſhould proſecute any Appeal from any Court of Equity, before the Houſe of Lords; Serjeant *Pemberton*,

Serjeant *Peck*, Sir *John Churchill*, and *Charles Porter*, Esq. were committed to the Custody of the Serjeant of the House, for a Breach of Privilege, in having been of Counsel at the Bar of the House of Lords, in the Prosecution of a Cause depending upon an Appeal, wherein Mr. *Dalmahoy*, a Member of the House of Commons, was concerned.

But the Serjeant having been by Force prevented keeping them in Custody, the Commons did, the 4th of *June*, 1675, acquaint the Lords, at a Conference, as followeth, *viz.*

We are further commanded to acquaint you, That the Enlargement of the Persons imprisoned by Order of the House of Commons, by the Gentleman Usher of the Black Rod; and the Prohibition, with Threats, to all Officers, and other Persons whatsoever, not to receive or detain them, is an apparent Breach of the Rights and Privileges of the House of Commons: And they have therefore caused them to be retaken into the Custody of the Serjeant at Arms, and have committed them to the *Tower*.

The said Counsel were afterwards committed to the *Tower* for a Breach of Privilege, and Contempt of the Authority of the House: And the House being informed, That the Lords had ordered Writs of *Habeas Corpus* for bringing the Counsel to the Bar of their House;

The Commons then passed the following Resolutions:

7 *Junii*, 1675.

Resolved, *Nemine contradicente*,

That no Person committed for Breach of Privilege by Order of this House, ought to be discharged during the Sessions of Parliament, but by Order or Warrant of this House.

Resolved, *Nemine contradicente*,

That the Lieutenant of the *Tower*, in receiving and detaining in Custody Sir *John Churchill*, Serjeant *Peck*, Serjeant *Pemberton*, and Mr. *Porter*, performed his Duty according to Law; and, for so doing, he shall have the Assistance and Protection of this House.

Resolved, *Nemine contradicente*,

That the Lieutenant of the *Tower*, in case he hath received, or shall receive any Writ, Warrant, Order, or Commandment, to remove or deliver any Person or Persons committed for Breach of Privilege, by any Order or Warrant of this House, shall not make any Return thereof, or yield any Obedience thereunto, before he hath first acquainted this House, and received their Order and Directions how to proceed therein.

Ordered,

That these Resolutions be immediately sent to the Lieutenant of the *Tower*.

Afterwards the Lieutenant of the *Tower* gave the House an Account, that he had refused to deliver the Counsel, upon the Lords Order, signified to him by the Black Rod, because they were committed by this House; and that after he had received the Votes of this House, he had Writs of *Habeas Corpus* brought him, to bring the Counsel to the House of Lords at ten o'Clock the next Morning, and humbly craved the Direction of the House what to do.

Mr. Speaker intimated to him, *He should forbear to return the Writs.*

And the House came to several other Resolutions.

9 *Junii*, 1675.

Resolved, *Nemine contradicente*,

That no Commoner of *England*, committed by Order or Warrant of the House of Commons, for Breach of Privilege, or Contempt of that House, ought, without Order of that House, to be, by any Writ of *Habeas Corpus*, or other Authority whatsoever, made to appear, and answer, and do, and receive a Determination in the House of Peers, during the Session of Parliament wherein such Person was committed.

Resolved, *Nemine contradicente*,

That the Order of the House of Peers, for the issuing out of Writs of *Habeas Corpus* concerning Serjeant *Peck*, Sir *John Churchill*, Serjeant *Pemberton*, and Mr. *Charles Porter*, is insufficient and illegal; for that it is general, and expresses no particular Cause of Privilege, and commands the King's Great Seal to be put to Writs not returnable before the said House of Peers.

Resolved, *Nemine contradicente*,

That the Lord-Keeper be acquainted with these Resolutions, to the End that the said Writ of *Habeas Corpus* may be superseded, as contrary to Law and the Privileges of this House.

Resolved, *Nemine contradicente*,

That a Message be sent to the Lords, to acquaint them, That Serjeant *Peck*, Sir *John Churchill*, Serjeant *Pemberton*, and Mr. *Charles Porter*, were committed by Order and Warrant of this House, for Breach of the Privilege and Contempt of the Authority of this House.

22 *Martii*, 1697.

Charles Duncomb, Esq. having been committed by Order of this House, and afterwards discharged by Order of the House of Lords, without the Consent of this House:

Resolved,

That no Person committed by this House can, during the same Session, be discharged by any other Authority whatsoever.

Resolved,

That the said *Charles Duncomb* be taken into the Custody of the Serjeant at Arms attending this House.

These are some Instances, among many others, that might be produced upon this Occasion; and the last cannot but be particularly remembered by some Noble Lords that then sat in the House of Commons, and strenuously asserted this Privilege of the Commons.

Your Lordships fifth Resolution, *viz.*

Resolved, That for the House of Commons to censure or punish any Person for assisting a Prisoner to prosecute a Writ of *Habeas Corpus*, or by Vote, or otherwise, to deter Men from soliciting, prosecuting, and pleading upon such Writ of *Habeas Corpus*, in behalf of such Prisoner, is an Attempt of dangerous Consequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the necessary Assistance to the Prisoner, upon a Commitment of the House of Commons, which has ever been allowed upon all Commitments by any Authority whatsoever.

The Commons take this to be another Instance of your Lordships Breach of your own Rule, your Lordships being no Judges of their Privileges; though by this Resolution you seem to make a Judgment, without having heard, and knowing what the Commons have to alledge for them.

This Attempt, therefore, in your Lordships is of dangerous Consequence, tending to a Breach of the good Understanding between the Two Houses, and of most pernicious Example. The Commons late Proceeding, in censuring and punishing the Counsel that have pleaded upon the Return of the Writs of *Habeas Corpus*, in behalf of the Prisoners, if duly considered, is a great Instance of the Temper of the House of Commons: For this House did not interpose when the Prisoners applied to the Lord-Keeper, and the Judges, to be bailed; and had the Lawyers shewn so much Modesty, as to have acquiesced in the Opinion of the Lord-Keeper and all the Judges, That these Prisoners were not bailable by the Statute of *Habeas Corpus*, the Commons had never taken any Notice of it: But they would not rest satisfied without bringing on again this Case; and the Privileges of the Commons were, with great Licentiousness of Speech, denied, and insulted in publick Court; not with any Hope or Prospect of Relief of the Prisoners (who in this whole Proceeding have apparently been only the Tools of some ill-designing Persons, that are contriving every Way to disturb the Freedom of the Commons Elections), but in order to vent these new Doctrines against the Commons of *England*, and with a Design to overthrow their fundamental Right. And after so much Inveteracy shewn to the Commons, they could do no less than declare the *Abettors, Promoters, Countenancers, or Assisters, of a Prosecution so carried on, to be guilty of conspiring to make a Difference between the Two Houses of Parliament, to be Disturbers of the Peace of the Kingdom, and to have endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the Commons of* England *in Parliament assembled.*

And the Commons, in committing the Lawyers, have only done that Right to their Body which your Lordships have frequently practised, in Cases of personal Privilege, where any single Member of your Lordships House is concerned.

Your Lordships last Resolution, *viz.*

That a Writ of Error is not a Writ of Grace, but of Right, and ought not to be denied to the Subject, when duly applied for, (tho' at the Request of either House of Parliament) the Denial thereof being an Obstruction of Justice, contrary to *Magna Charta.*

The Commons shall not enter into any Consideration, whether a *Writ of Error* is of *Right*, or of *Grace*; they conceiving it not material in this Case, in which no *Writ of Error* lies, nor was ever any *Writ of Error* brought or attempted in the like Case before; and the allowing it in such Cases would not only subject all the Privileges of the House of Commons, but the Liberties of all the People of *England*, to the Will and Pleasure of the House of Lords.

And when your Lordships Exercise of Judicature upon Writs of Error is considered, how unaccountable in its Foundation, how inconsistent it is with our Constitution, which, in all other Respects, is the wisest and happiest in the World, to suppose the last Resort in Judicature and the Legislature to be differently placed!

And when it is considered how that Usurpation, *in hearing of Appeals from Courts of Equity*, so easily traced, though often denied and protested against, yet still exercised, and almost every Session of Parliament extended, it is not to be wondered, that after the Success your Lordships have had in those great Advances upon our Constitution, you should now at once make an Attempt upon the whole Frame of it, by drawing the Choice of the Commons Representatives to your Determination; for that is a necessary Consequence, from your Lordships encouraging the late Actions, and your countenancing a *Writ of Error*; which, if allowed upon such a Proceeding, might as well be introduced upon all Acts and Proceedings of Courts or Magistrates of Justice: And though the present Instance has been brought on under the specious Pretence of preserving Liberty, it is obvious the same will as well hold to controul the bailing and discharging Prisoners in all Cases.

And the Commons cannot but see how your Lordships are contriving, by all Methods, to bring the Determination of Liberty and Property into the *bottomless and insatiable Gulph of your Lordships Judicature*, which would swallow up both the Prerogatives of the Crown, and the Rights and Liberties of the People; and which your Lordships must give the Commons Leave to say, they have the greater Reason to dread, when they consider in what Manner it has been exercised; *the Instances whereof they forbear, because they hope your Lordships will reform: And they desire rather to compose the old, than to create any new Differences.*

Upon the whole, the Commons hope, That, upon due Consideration of what they have laid before your Lordships, you will be fully satisfied they have acted nothing in all these Proceedings, but what they are sufficiently justified in from Precedents, and the known Laws and Customs of Parliament; and that your Lordships have assumed and exercised Judicature contrary to the known Laws and Customs of Parliament, and tending to the Overthrow of the Rights and Liberties of the People of *England.*

Resolved, That a Conference be desired with the Lords, upon the Subject Matter of the last Conference.

Ordered, That Mr. *Aislaby* do go to the Lords, and desire the said Conference.

Mercurii, 7 *die Martii*, 1704.

Mr. *Aislaby* reported, That he having been at the Lords (according to the Order Yesterday) to desire a Conference upon the Subject Matter of the last Conference, the Lords return an Answer,

That they do agree to a Conference accordingly, and appoint the same presently in the Painted Chamber.

Ordered,

Ordered,
That the Managers who managed the last Conference, do manage the Conference which is to be presently with the Lords.
And the Managers went to the Conference.
And being returned,
Mr. *Bromley* reported, That they had been at the Conference, and delivered to the Lords what the House had directed.
A Message from the Lords by Sir *Richard Holford* and Mr. *Pitt*. *Mr. Speaker*, The Lords desire a free Conference with this House To-morrow at One of the Clock, in the Painted Chamber, upon the Subject Matter of the last Conference.
Resolved,
That this House will send to the Lords an Answer by Messengers of their own.
And the Messengers were called in again; and *Mr. Speaker* acquainted them therewith.

Jovis, 8 *die Martii*, 1704. *Anno* 4 *Annæ Reginæ*.

Resolved,
That a Message be sent to the Lords, to acquaint them, That when their Lordships sent Yesterday in the Afternoon, after Three o'Clock, to desire a free Conference upon the Subject Matter of the last Conference, the House was just rising; but that this House will meet their Lordships at a free Conference, as their Lordships have desired, at such Time as their Lordships shall appoint, the Time named Yesterday by their Lordships being now past.
Ordered,
That Sir *Thomas Hanmer* do carry the said Message.
Ordered,
That the Managers who managed the last Conference, do manage the said free Conference: And some others were added to them.
Sir *Thomas Hanmer* reported, That he having been at the House of Lords, to deliver the Message directed by this House, he found that the Lords were just up.
The Serjeant at Arms attending this House, having acquainted the House, That he had received Two Writs of *Habeas Corpus* under the Great Seal of *England*, to bring before the Lord Keeper the Bodies of *James Mountague*, Esq. and *Alexander Denton*, Esq. (who are committed to his Custody by Warrants from the Speaker of this House for a Breach of Privilege),
The House again assumed the Consideration of that Matter: And after Debate,
Resolved, That no Commoner of *England*, committed by the House of Commons for Breach of Privilege, or Contempt of that House, ought to be, by any Writ of *Habeas Corpus*, made to appear in any other Place, or before any other Judicature during that Session of Parliament wherein such Person was so committed.
Resolved, That the Serjeant at Arms attending this House, do make no Return of, or yield any Obedience to the said Writ of *Habeas Corpus*; and for such his Refusal, That he have the Protection of the House of Commons.
Resolved, That the Lord Keeper be acquainted with the said Resolutions, to the End, that the said Writs of *Habeas Corpus* may be superseded, as contrary to Law, and the Privileges of this House.
Ordered, That the Clerk of this House do acquaint the Lord Keeper of the Great Seal of *England* with the said Resolutions.

Veneris, 9 *die Martii*, 1704.

The Clerk acquainted the House, That he did, pursuant to their Commands last Night, wait upon the Right Honourable the Lord-Keeper of the Great-Seal of *England*, and acquaint his Lordship with the Resolutions of the House Yesterday, relating to the Writs of *Habeas Corpus*; and left the Resolutions with his Lordship.
Sir *Thomas Hanmer* reported, That he having been at the Lords with the Message order'd Yesterday, the Lords do return Answer, That they do agree to meet this House at a free Conference this Day, at Two o' Clock, in the Painted Chamber.
Then the Managers went to the free Conference.
And being returned,
Mr. *Bromley* reported, That the Managers appointed had met the Lords at the free Conference, which had lasted very long; And that when the Managers for the Commons took Notice of some Invasions of the House of Lords in point of Judicature, particularly as to Appeals, the Lords broke up the Conference.
Ordered, That the Managers do draw up what had passed at the Conference, and lay the same before the House with all convenient Speed.

Martis, 13 *die Martii*, 1704.

Mr. *Bromley* reported, That the Managers of the free Conference with the Lords had (according to Order) drawn up what had passed at the said free Conference, which they had directed him to report to the House, which he read in his Place, and afterwards delivered in at the Clerk's Table.
Ordered, That the said Report be enter'd upon the Journals, and is as followeth, *viz.*
That the Lords who appear'd as Managers, and spoke at this free Conference, were, the Earl of *Sunderland*, the Lord *Ferrers*, the Bishop of *Salisbury*, the Lord *Halifax*, and the Lord *Wharton*, and the Duke of *Devonshire*, Lord Steward.
That the free Conference was begun by the Managers for the Lords, who said, This Conference was desired to maintain a good Correspondence between the Two Houses, which was never more necessary than at this Time.
That the delivering Resolutions at their first Conference was Parliamentary; and instanced the Resolutions, 3 *Car.* I. which produced the Petition of Right.
That the Lords look upon the Commons to be a great Part of the Constitution, which cannot be preserved but by doing Right to both Houses.
That every Part of the Body Politick, as well as the Body Natural, ought to be kept within due Bounds; an Excess in any Member will weaken the whole.
That this Constitution is the Wonder of the World, and Glory of this Nation; 'tis founded upon Liberty, and Property: And the House of Commons hath been a great Fence and Bulwark of Liberty.
That the Lords Resolutions are very well founded, and justified by the Laws of the Land, as is their Judicature in this Case.
That it was proper for them to receive the Petitions, and make these Resolutions thereupon.
That the Lords are the great Court of Judicature; and when the Courts below have differed in Opinion, there has been resort to the Lords for their Judgment, as in the case of Kindred of Half-blood claiming Shares of Intestate Estates.
That when such a Complaint comes before the Lords, they ought to give their Opinion as to the Law of the Land; and that was the Foundation of their present Resolutions.
1. That the First Resolution was, in effect, agreed to by the Commons, tho' they go off to Foreign Matters, of which the Lords take no Notice.
That the Law of the Land can be altered only by the Legislature.
2. That the Second Resolution asserts the Subjects Redress by Action at Law, *&c.*
That all Constitutions have reckon'd this their Safety, That every Man, from the highest to the lowest, hath the Protection of the Law.
That, according to our Constitution, the Subject may contest his Righ with the Crown, and upon equal Terms, with that respect which it due.
That this Resolution only asserts the Right, does not state the respective Courts, where the Redress is to be had: If the Party mistakes the Court, he is punished by Costs of Suit.
The Term of privileged Causes is new, and the Distinction unknown.
3 To support the Third Resolution, it was urged,
That the Breach of Privilege was not well grounded.
That it belongs to the Crown to make Declarations; the Commons did indeed make Ordinances; and when their Prince was murdered, they came to Declarations.
That a Law without Promulgation cannot have Force to make an Offence.
The Liberty of Men's Persons is the greatest Privilege, and not to be taken away, but in known Cases; the invading of it has shook the best Constitutions.
That the taking away the Liberty of one mean Person, once endanger'd the Government of *Rome*.
That both Houses may commit for Breach of Privilege, but cannot declare any thing to be a Privilege, without good Grounds; nor consequently make any thing a Contempt, that is not known to be so.
That Commitments or Censures have not been usual upon Actions at Law, though such Actions have brought the Proceedings, or Privileges, of either House in Question.
That in the case of Freedom of Speech, which is the greatest Privilege, there was a Judgment in King *Charles* the First's Reign, in the Heat of those Times, against some Members, for Speeches in Parliament: This the Commons first condemn'd; and then by Conference brought it before the Lords, who came to a Resolution, That it was erroneous, and desired the Lord *Hollis* to bring his Writ of Error; and thereupon it was reversed by the Lords, in the Time of *Charles* the Second; which shews the Care the Lords had of the Commons Privileges.
That in *Soame* and *Barnardiston*'s Case, the Commons did not concern themselves, only in Support of the Action, when in 1678 they examined the Judgment of Reversals as a Grievance.
That the Lords had not interposed in any Suits which concern'd the Proceedings of their House.
That the Earl of *Banbury* (as he was called) was, by the Lords, adjudged to be no Peer: This was examin'd in the *King's-Bench*, where, in Abatement of an Indictment for Murder against him, as *Charles Knowles*, Esq. he pleaded his Title of an Earl; and in Avoidance of that, the Order of the Lords was replied, and was examin'd by the Court, and disallow'd.
That the late Bishop of St. *David*'s was prosecuted in the Spiritual Court, and depriv'd, tho' a Member of that House; and the Lords did not interpose.
That it is the Wisdom of all Governments, to have the Law open; and that's the Difference between a Legal and Arbitrary Government.
That the Lords do not meddle with the Commons Right of determining their own Elections; they have a settled possession of it, which is a Right: But if all the Rights of Subjects concerned in those Elections are to be determined there, that will bring all Questions of Freehold, and the Allowance of all Charters, and all Liberty and Property, before them.
That a Freeholder of Forty Shillings *per Annum* has a Right of Inheritance, to which he is born; and if his Vote is denied, he is damnified, and loses the Credit of his Vote; and if he shall only come to the House of Commons, they can neither give him Damages, nor Costs of Suit.
That a Freehold cannot be determined by any Court which cannot give an Oath.
That the Precedents produced concern only the Right of determining Elections in general.
And an Action by an Elector, for his Right of voting, does not avoid the Election.
4. To maintain the Fourth Resolution, they said,
That it may be lawful for a Man to apply for his Liberty, where he cannot have it.
That the Proceedings in 1675, produced as a Precedent in this Case, were upon a Matter contested between the Two Houses, and resolved differently in the Lords House: *Topham* and the Lieutenant of the *Tower* were both turn'd out; and the Ferment was so high, that the Parliament was prorogued, and soon after dissolved.
5. The Fifth Resolution is a Consequence of the Fourth:
That the Commitment of the Lawyers was not for licentious Speech, as was insinuated at the last Conference, but for pleading upon the Return of the Writs of *Habeas Corpus*.
That 'tis the particular Character of that odious Court call'd the Inquisition, that nobody dares appear for, or resort to a Person imprison'd there, but he is left to the Mercy of that Court.
The Lawyers are not to be answerable for every thing they argue; they are to do their Duty for their Clients, and the Court is to judge of it.
6. The Commons declining the last Resolution is an agreeing it, though not so Parliamentary as it would have been to have agreed it directly.

That

That the Lords are the only proper Judges, Whether the Writ of Error lies before them.

To theſe Arguments the Managers for the Commons Anſwered,

That they agreed the Neceſſity of a good Correſpondence between the Two Houſes, eſpecially at this Time of common Danger; and that the Commons had fully ſhewn their Deſire to maintain that good Correſpondence, by condeſcending to meet their Lordſhips at this free Conference, altho' their antient and fundamental Privileges had been call'd in Queſtion, and denied by their Lordſhips, and that in an extraordinary and very unparliamentary Manner.

That the Delivery of Reſolutions is ſo far from being the only Method of Conferences, that the more uſual Method has been to offer Reaſons, without Reſolutions; and it would be very difficult to give any Inſtance (before this) of either Houſe delivering poſitive Reſolutions at a Conference, without the Reaſons, at the ſame Time, to ſupport them, and that induce them to make ſuch Reſolutions.

1. That the Commons Anſwer to the Lords Firſt Reſolution is not foreign to the Subject Matter of the Conference; becauſe the Commons apprehended the Subject Matter to be their Lordſhips denying the Privileges of the Commons on the one hand, and their extending their own Judicature beyond its proper Limits on the other: And therefore the Commons could not but take Notice, how far their Lordſhips had tranſgreſſed in the Exerciſe of an unwarrantable Judicature, in Contradiction to that very Rule they had laid down for the Teſt of the Proceedings of the Commons, and by which the Commons had ſtrictly govern'd themſelves.

That the Commons cannot create new Privileges; yet in *Coke*'s 13 *Reports*, Fo. 63. 'tis ſaid, the Privilege of Parliament, either of the Upper Houſe, or of the Houſe of Commons, belongs to the Determination or Deciſion only of the Court of Parliament; for every Court hath a Right to adjudge their own Privileges, according to the Book of *E.* IV. Sir *John Paſton*'s Caſe.

2. To their Lordſhips Arguments for their Second Reſolution your Managers anſwer'd,

That every Perſon injured hath a Right to ſeek Redreſs; but then that Redreſs muſt be ſought in the Place where the Matter is properly cognizable.

3. To what the Lords offered upon the Third Reſolution, your Managers anſwered, That Matters of Election do not belong to the Courts below, but only to the Houſe of Commons, which hath been in long Poſſeſſion of them: That there was an Act of Parliament made in the Time of King *Henry* the Sixth, to give an Action for a falſe Return of Members to ſerve in Parliament, becauſe no ſuch Action lay at Common Law, it relating to Elections.

That double Returns not being within that Statute, no Action lay in the Courts of Common Law for making any double Return, 'till the Statute 7 & 8 *William* III.

That beſides the Inſtances given in the Anſwers the Commons gave to the Lords Reſolutions at the laſt Conference, this Diſtinction, as to privileged Caſes, is fully and undeniably warranted by the Statute made in the Firſt Year of King *William* and Queen *Mary*, entitled, *An Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown*; where, among other Endeavours of the late King *James* to ſubvert and extirpate the Laws and Liberties of the Kingdom, theſe are mentioned, *by violating the Freedom of Election of Members to ſerve in Parliament*, and *Proſecutions in the Court of* King's-Bench, *for Matters and Cauſes only cognizable in Parliament.*

Beſides, That there are privileged Caſes as well as privileged Perſons, appears from hence: A Prohibition, and afterwards an Attachment, lies for ſuing in the Spiritual Court for a Temporal Cauſe determinable in the Temporal Court. There are divers Laws within this Realm, of which the Common Law is but one, as appears in *Coke*'s 1 *Inſt.* Fo. 11. B. where he mentions *Lex & Conſuetudo Parliamenti, & Lex Communis*, as diſtinct Laws.

As there are ſeveral Laws, ſo there are ſeveral Courts and Juriſdictions, and ſeveral Cauſes proper for thoſe ſeveral Laws and ſeveral Juriſdictions: Of theſe the High Court of Parliament is the Firſt; *Lex & Conſuetudo Parliamenti* is a great Branch of the Law of *England*; and many Cauſes are to be determined only by that Law, as appears in the *Inſt.* Fo. 23.

With ſuch Cauſes as are in their Nature Parliamentary, and to be determined by the Law of Parliament, the Common Law, and Common-Law Judges have nothing to do; as further appears, 4 *Inſt. fo.* 14, 15. where the Expreſſions are very ſuitable to the preſent Controverſies.

That the Perſons perſiſting in the Proſecution of ſuch Actions, after a Prohibition by the Commons, for that ſuch Cauſes belong to their Juriſdiction, the committing them for the Breach of their Privileges in that Particular, is no more than is done by the Common Law Courts for a like Contempt, when Perſons will ſue after a Prohibition to the Spiritual Courts: And the Commons uſual way to defend their Privileges againſt ſuch Invaſions, has been by committing the Tools and Inſtruments thereof.

It is a fundamental Maxim of the Law and Cuſtom of Parliament, which is the higheſt and nobleſt Part of the Law of *England*, and particularly adapted to the Preſervation of the Liberties of this Kingdom, That the Two Houſes are independent of one another, and ſole Judges of their Rights and Privileges: That their Lordſhips did admit, the Commons have a Privilege to judge of the Rights of their own Elections to one Intent, but not to another: But if the Commons have ſuch a Privilege to one Intent, they muſt be Judges of it to all Intents and Purpoſes whatſoever; and being ſole Judges thereof, their Judgment cannot be legally call'd in Queſtion, either by Writs of *Habeas Corpus*, Writs of Error, or otherwiſe, in any other Court; and conſequently the Proceedings in *Weſtminſter-Hall*, and in the Houſe of Peers, and the Judgment given there, are all null and void, *& coram non Judice.*

The Commons Commitment for commencing theſe Actions, is no more than what they and their Predeceſſors have in all Times practiſed in Caſes of Breach of Privilege.

4. In Anſwer to what the Lords had offered upon the Fourth Reſolution, your Managers inſiſted, That Application of Friends for the Liberty of any Perſon impriſoned, ought to be in a proper Place, and in a proper Manner, which in this Caſe ought to have been only to the Houſe of Commons, and by the Petitions of the Perſons they had committed.

That the Proceedings in 1675 were ſo well grounded, that they muſt be Precedents to the Commons to follow at all Times upon the like Occaſions.

5. To what the Lords offered upon the Fifth Reſolution, your Managers anſwered;

The Licentiouſneſs of Speech uſed by the Lawyers, was only mentioned among other Particulars of the Provocations they gave the Houſe of Commons, but they were committed for pleading upon the Returns of the Writs of *Habeas Corpus*, in behalf of the Priſoners committed by the Houſe of Commons, which the Commons (who are the only Judges of their own Privileges) take to be a great Breach of the Privilege of their Houſe.

6. To the laſt Reſolution your Managers inſiſted, That no Writ of Error lies in that Caſe; and that there may be Caſes wherein no Writ of Error lies, was their Lordſhips Opinion in the Caſe of the late Biſhop of St. *David*'s, who brought his Writ of Error upon the Court's not granting him a Prohibition.

The Caſe of Sir *Thomas Armſtrong*, mentioned by their Lordſhips, was particular, in that the Commons then apprehended he was entitled to a Writ of Error within the Meaning of the Statute of *Edward* the Sixth.

Your Managers further urged the Novelty of the Action in the Caſe of *Aſhby* and *White*, of which no Footſteps can be found in any Book of the Law, or in any Record, although we have faithful Reports of all memorable Caſes for four hundred Years paſt; and the Occaſion of ſuch an Action muſt frequently have happened.

The Lords themſelves (when they had no Deſign upon the Privileges of the Commons) were of Opinion, in the Caſe of Sir *Samuel Barnardiſton*, in the firſt Year of the Reign of King *William*, That no ſuch Action lay; and there is no one Reaſon can be offered to maintain this Action, but held more ſtrongly in the Caſe of Sir *Samuel Barnardiſton*, as Damages, Coſts, *&c.* And it is an abſurd Diſtinction to ſay, That in this Caſe the Right of Election cannot come in Queſtion, becauſe the determining of the Right of the Electors doth generally determine the Right of the Elected; and almoſt all controverted Elections depend upon the Qualifications of the Electors.

That the Commons had ſhewn ſuch a Diſpoſition to maintain a good Correſpondence with their Lordſhips, though their Lordſhips, in the Caſe of *Aſhby* and *White*, had, contrary to the Judgment of the Courts below, allowed the Action upon which the Plaintiff had taken out Execution, and levied the Money; that the Commons took no Notice of it, and were willing to let the Matter fall, which might occaſion any Conteſt in this Time of publick Danger: But when other Actions of the like Nature were ſtill commenced and proſecuted, whereby all Elections would be brought to the Determination of the Lords, or, at leaſt, in time ſo influenced, as that the Lords would in effect chuſe the Commons, and thereby the Independency of the Two Houſes would be deſtroyed, which is the great Safety of the Conſtitution; then it concerned the Commons, who are the Repreſentatives of the People, to oppoſe what would be ſo fatal to our Conſtitution.

The bringing Writs of *Habeas Corpus* upon the Commitments of the Commons, and a Writ of Error thereupon before the Lords, would bring all the Privileges of the Commons to be determined by the Judges, and afterwards by the Lords, upon ſuch Writs of Error.

Nay, ſuch Writs of Error upon every *Habeas Corpus*, would bring the Liberty of every Commoner in *England* to the arbitrary Diſpoſition of the Houſe of Lords.

And if a Writ of Error cannot be denied in any Caſe, and the Lords alone are to judge whether the Caſe be proper for a Writ of Error, then all the Queen's Revenue, all her Prerogatives, and all the Lives and Liberties of the People of *England*, will be in the Hands of the Lords; for every Felon, Burglar, and Traitor, will be entitled to a Writ of Error before the Lords; and they will have even Power of Life and Death.

And by Writs of Error and Appeals, as already exerciſed, they will have all our Properties; by ſuch new-invented Action they will have all our Elections; and by ſuch Writs of *Habeas Corpus*, and Writs of Error thereupon, they will have all our Privileges, Liberties, and even Lives, at their Determination; who determine by Vote, with their Doors ſhut, and it is not certainly known who it is that hurts you.

The Novelty of thoſe Things, and the infinite Conſequences of them, is the greateſt Argument in Law, That they are not of Right.

The Commons are not contending for a ſmall Thing, but for their All:

Eſpecially ſince the Lords have found out a way to diſtreſs the Government, by detaining the Money given by the Commons, which muſt come laſt to them, becauſe the Money-Bills muſt begin with the Commons; and if by that Means they can extort Writs of Error where they never were heard of, the Commons muſt commit the Perſons employed in all ſuch Innovations, or elſe they muſt loſe, by ſuch Contrivances, All that they have.

In the Caſe of *Denzil Hollis*, Sir *John Elliot*, *&c.* in 1667, the Commons declared the Judgment given in 5 *Car.* I. to be an illegal Judgment, and againſt the Privilege of Parliament: And this they did of themſelves, before they acquainted the Lords therewith.

Afterwards, becauſe it concerned the Lords as well as the Commons, they imparted their Reſolutions to the Lords, who concurred with the Commons; and the Writ of Error, which was afterwards brought at the Deſire and Inſtance of the Lords, and not at all by the Deſire of the Commons, they reſted upon their own Reſolution, That it was an illegal Judgment. *Vid.* Vol. VII. p. 242.

The Lords, by way of Reply, ſaid further, That this is a Cauſe of Liberty and Property, and judicial Proceedings, which the Commons had endeavoured to ſtop.

That the Conference therefore aſked by the Lords upon the fundamental Rights and Liberties, was proper.

That they are the ſame Terms the Commons uſed, 3 *Car.* when their Liberties were attacked.

That

That the true Method of Conference is not by way of Question and Answer, but by Resolutions, which are not so binding; but if the Lords are convinced by Arguments, they may retract them.

That the Lords, sure, may regularly take Notice of this printed Paper, when it contains such Declaration as all Persons are bound to take Notice of at the Peril of Commitment.

That the Right of the House of Commons to determine their own Elections is not in Question, or intended to be changed; but the two Precedents produced to support them are very much mistaken.

That the Case of Sir *Francis Goodwin* is not fairly stated, the Word *Order* being omitted in the Commons Answer to the Lords Message, relating to the Commons Proceedings in this Case; which refers to a particular Order of the House of Commons, they having before determined that Election. That it is not taken Notice, that the Lords went with the Commons to the King, and were Mediators; and that at the last a new Writ issued for a new Election.

That in the stating the Precedent, 28 *Eliz.* the Commons have not taken Notice, That the Election was in that Case determined by the Judges.

That the Commons did not confine their Resolution to *Armstrong*'s Case; but it is general and absolute, That a Writ of Error in Felony, or Treason, is of Right, and not of Grace.

That by the Writ of Error, brought in the late Bishop of St. *David*'s Case, upon the Denial of a Prohibition, and disallowed by the Lords, it appears, when a Record comes improperly before them, they are so just as to dismiss it.

That instead of proving the Law, the Consequences are urged, which is not right arguing.

That the Question is, Whether the Queen is bound to grant a Writ of Error? If She is, it will be hard for any Body of Men to interpose with the Crown, and stop it to hinder that *Fiat*; which, by the Opinion of the Judges, She ought to give.

She is obliged too, by *Magna Charta: Nulli negabimus, nulli deferemus, Justitiam.*

That whether a Writ of Error lies or not, will afterwards be proper for the Judgment of this Court, as 'tis of any other Court where a Writ of Error is returnable.

That the Commons are very safe, and may depend the Lords will be as tender of their Privileges as of their own.

That whatever Privileges accrue to the Commons, will accrue to the Lords also: If the Commitments of the Commons are free from the Cognizance of the Courts below, those of the Lords will be so too.

That 3 *Car.* the Commons maintained, That the Measure of Persons being bailable, is not from the Authority which committed, but from the Cause of Commitment.

Your Managers further observed, This Subject Matter was scarce ever in Conference before between the Lords and Commons, and will seem strange to Posterity.

That the Lords Concern for Liberty and Property cannot be equal with that of the Commons; for the Lords Liberty is better fenced, and consequently their Property too, than that of the Commons.

The Lords are less interested in the Event of this Conference than the Commons, who are the Trustees of those who sent them, and are bound in Duty and Interest to preserve their Liberty and Property: And having but a Triennial Duration, which is at this Time near expiring, it is not to be imagined they will infringe what they are entrusted with, and so much concerned to maintain; and that so notoriously, that the Lords should complain, who are much less concerned, but more to be feared, as their Designs, as well as Honour, may be Hereditary.

At the first Conference, six Resolutions were delivered as Matters of undoubted Truth and Law.

And the Proceedings of the Commons are to be tried by these Rules, though they were no Parties to the making them.

1. The First is not to be excepted against; only is an Insinuation, as if the Commons had practised the contrary. which they are not conscious of.

2. To the Second, There are many Injuries for which no Action at Law is allowed; as if a Judge gives a wrong Judgment, the Redress by Writ of Error is no Satisfaction for the Damage.

So for other Acts of a Judge, or Court of Justice, as denying a Writ of *Habeas Corpus*, or Bail, no Action lies, but upon the late Statute.

That their Lordships, not making any Distinction between Matters and Causes which were exempt from the Cognizance of the Common Law Courts, as being solely cognizable in Parliament, and Causes which were exempt only in respect of the Persons sued, being entitled to Privilege of Parliament, seems to be the Occasion of the Mistakes their Lordships have entertained in relation to the Proceedings of the Commons: That the House of Commons is a Court of Judicature in many respects; and as such, hath, as well as other Courts, Causes proper and peculiar to its Jurisdiction.

That the Law-Books, and particularly the Lord *Coke*, speaks of Matters of Parliament which *are not to be determined by the Common Law, but according to the Law and Usage of Parliament.*

That *all Matters moved are done in Parliament, must be questioned and determined there, and not elsewhere*, has been heretofore asserted by the House of Commons, as their ancient and undoubted Right, and has been allowed both by the Judges of Law, and by their Lordships. And when the Judges in the *King's-Bench*, in the fifth Year of King *Charles* the First, upon an Information against Sir *John Elliot*, Mr. *Hollis*, and others, held, *That Matters done in the House of Commons, if not done in a Parliamentary Way, might be questioned elsewhere*; that Judgment was afterwards reversed in Parliament.

That their Lordships allowed, all Matters relating to Elections ought to be determined solely by the Commons: And though their Lordships attempted to make a Distinction between the Right of Elections, and the Right of Electors, yet their Lordships cannot find Room for such a Distinction, unless they would say, the Right and Qualification of the Electors was a Matter not relating to Elections.

That by the Parliament Rolls, 11 *Rich.* II. it appears a Petition was exhibited by Parliament, and allowed by the King, *That the Liberties and Privileges of Parliament should be discussed by the Parliament, and not by any other Courts, nor by Common or Civil Law*; and therefore, when the Judges have been asked their Opinions in Matters of Parliament, they have answered, *That the Privileges of Parliament ought to be determined there, and not by any other*; as they did in the Case of *Thorp*, Speaker of the House of Commons, 31 *H.* VI.

That these Matters are not exempt from the Determination of other Courts, in respect of the Person sued; for then they might be determined there after the Time of Privilege was expired; whereas it is evident, That such Matters and Causes cannot be determined in any other Courts than that of the Parliament, after the Expiration of the Time of Privilege, any more than before.

That these Matters are determinable in Parliament, although the Persons prosecuted are not entitled to the Privilege of Parliament, as appears by many Instances, particularly by that of the Mayor of *Westbury*, in the Eighth Year of Queen *Elizabeth*, who, for taking *Four Pounds* to get a Person elected a Burgess for that Borough, was fined and imprisoned by the *House of Commons*, although he was not a Person entitled to the Privilege of Parliament.

That it may as well be said, That an Action is maintainable for refusing any of the Lords a Right of Precedency in Parliament; yet it cannot be imagined the House of Peers would be content the same should be brought in Question in any the Courts of Law, and decided by a Jury of Commoners.

But the same Arguments will hold for maintaining such an Action, to recover Damage for refusing Precedency to him that hath Right to it, as for maintaining an Action to recover Damages for refusing to take down upon the Poll the Vote of an Elector: For it may with equal Reason be said in both Cases, That the Plaintiff hath a Right, That the Defendant refused him that Right, That such Refusal is an Injury, and consequently ought to be repaired in Damages.

3. As to the Third Resolution, the Commons are not accountable to the House of Lords, or any other Court, for what they did in that Matter.

Their Privileges being Rights peculiar to that House, what is their Privilege, and the Breach of it, is only examinable, and to be judged by themselves.

That the Courts of *Westminster-Hall* have that Deference for each other's Judgment, that in Commitments for Contempt, or Misdemeanor, which are frequent every Term, another Court, though Superior, will not redress the Prisoner by *Habeas Corpus*, or otherwise, but he must address to the Court which committed him; much less can an inferior Court do it.

The House of Commons therefore expected the same Deference from those Courts which they pay each other, and also from the Lords House what is due to a co-ordinate Jurisdiction: The Commons taking themselves to be superior to any Court in *Westminster-Hall*, and not allowing any Court in this Government to be their Superior, no more than their Predecessors have done.

The Commons do not intend by their Declaration to make a new Law, but barely declare what the Law was, and prohibit any Person to act contrary.

The Term *Declaration* is not peculiar to the Prince, but is a familiar Term in *Westminster-Hall.*

The Commitment was not for acting contrary to the Vote of the Commons, but for acting contrary to Law, after the Law was notified to them by that Declaration, and they thereby prohibited to proceed in that Course.

To set this in a true Light, If a Man sues in the Admiralty, or Ecclesiastical Court, for a Matter properly cognizable at Common Law, the Party shall not indeed be committed for commencing that Suit; but if the Defendant in such Suit obtains a Prohibition, which declares what the Law is, and gives the Plaintiff Notice that his Suit is contrary to Law, and therefore prohibits him to proceed any further therein; if he does proceed, an Attachment will issue to arrest him for Breach of the Prohibition, as it is said, though in Truth, it is for acting contrary to Law, after he had been admonished what the same was.

Now there is no Difference between the Declaration complained of, and the Prohibition mentioned, but in the Name only; both declare what the Law is; both admonish the Person offending, and both command him not to proceed; so that there is as much Reason to complain of a Prohibition at Law, as of the Declaration mentioned in the Resolution.

4. To the Fourth Resolution, if it respects the Prisoners committed by the Commons, they apprehend the Application ought to be to their House.

5. For the Fifth Resolution, the Commons have the same Exceptions to it as they had to the Third Resolution: For if Counsel, Attornies, or Solicitors, are prohibited, and act contrary to the Order of any Court, they are guilty of a Contempt of that Court; and for such Contempt they may be taken into Custody.

To their Lordships last Resolution, it is very true, That in the last Reign the House of Commons did so resolve in the Cause of Sir *Thomas Armstrong* as hath been cited; which Case was, That Sir *Thomas Armstrong* was indicted for High-Treason, and afterwards fled beyond Sea, where he was at the Time of the *Exigent* awarded against him; and afterwards, within a Year after the *Exigent* awarded, he was brought Prisoner into *England*, and would have a *Writ of Error*, but it was denied him; upon which the *House of Commons* made the Resolution mentioned. At the Common Law, if a Person had been guilty of a capital, or any other Crime, and had been in *England* at the Time of the Indictment found against him, but was beyond Sea at the Time of the *Exigent* awarded, and thereupon an Outlawry was had, the Person outlawed might any Time afterwards have reversed that Outlawry for that Error in Fact: The Practice whereupon was, That Persons guilty of Treason, would fly beyond Sea, and there stay 'till the Witnesses against them were dead, and then return into *England*, reverse their Outlawry, and become safe. To remedy which Mischief, was the Statute of *Edw.* VI. made, which takes away that Error in Treason, unless the Person

Outlawed rendered himſelf to the Chief-Juſtice within a Year after the Outlawry; within which Exception was the Caſe of Sir *Thomas Armſtrong*, as the Commons apprehended, which was the Reaſon of the Reſolution: And in other Caſes the Practice ſince that Reſolution has been otherwiſe; for in the Caſe of *Salisbury*, who was attainted of Felony for counterfeiting the Stamps, a *Writ of Error* was denied him, though he petitioned for the ſame. But if this Reſolution is aimed at a *Writ of Error* for denying a *Habeas Corpus*, or denying to bail, or diſcharge Perſons committed by the *Houſe of Commons*, this Reſolution is very wide from the Purpoſe; for, whether a *Writ of Error* be a *Writ of Right*, or a *Writ of Grace*, in all Caſes where a *Writ of Error* does lie, yet their Lordſhips Reſolutions cannot be carried ſo far as to make a *Writ of Error* lie in a Caſe where there is no Judgment pronounced, as there never is in the Caſe of an *Habeas Corpus*, or in any thing relating thereunto; for if an *Habeas Corpus* is denied, or if granted, and the Perſons thereupon denied to be bailed or diſcharged, this is no ſuch Judgment, but that the ſame, or any other Court, may grant an *Habeas Corpus*, and diſcharge or bail the Perſon committed.

Your Managers added, The Commons hoped it would be no Difficulty to convince the Lords, that theſe Reſolutions were both unreaſonable and unparliamentary, and they have not been much juſtified; and certainly it cannot be parliamentary or reaſonable, for the Lords to condemn the Commons in the Caſe of their own Privileges, when the Lords are no Judges of them: And therefore, though the Commons have now entered into this Debate with their Lordſhips, it was never meant to ſubject their Proceedings to the Lords Examination, but only to ſatisfy the Lords, and all Mankind, that the Commons have not done any extravagant Thing. That a Noble Lord ſaid, *They did not intend to interrupt the Commons in the Determination of their Elections.* The Commons are beholden to them for that; for otherwiſe, when they thought fit, they might as well meddle with that, as ſeveral other Things they have of late taken upon them.

The Commons hope their Lordſhips will conſider what the Conſtitution is, and think it not reaſonable, that any Part ſhould exceed its due Bounds: But there have been great Invaſions made upon it by their Lordſhips, and ſome Inſtances of that kind have been delivered at the laſt Conference; and it would be eaſy to ſhew, That the Judicature which of late has been aſſumed by the Lords, is not conſiſtent with the Conſtitution.

A *Writ of Error* in this Caſe, the Commons take to be ſuch: And the Commons would be blameable for admitting of it, ſince no ſuch Writ does lie; and the Commons have done well in adviſing Her Majeſty not to grant it, ſince it is againſt Law: The Commons find no ſuch Writ ever brought.

'Tis ſaid, their Lordſhips will do Right to the Commons upon it; but the Commons can never think it reaſonable to truſt the Liberties of the People of *England* to their Lordſhips Pleaſure, for they that have Power to do Right have Power to do Wrong; and Power is ſo often abuſed, that the Commons can never ſuffer the Lords to aſſume this new Power to themſelves. Were we certain Power could never be abuſed, an *Arbitrary*, and what is called a *Tyrannical*, *Power* would be the beſt in the World, for that not being tied to any Rule, would apply the Remedies proper in all Caſes; but ſince this is not to be expected, the Commons were in the right to ſtop this *Writ of Error*: They find one Thing has brought on another; and therefore, for the future, ſhall oppoſe any further Progreſs of this Nature.

It was further urged by the Lords, in Reply, That if ſuch a *Writ of Error* wants a Precedent, 'tis a new Sort of Impriſonment has occaſioned this.

That the Conſequences urged by Gentlemen cannot avail.

That if the Law be ſo, nothing but the Legiſlature can alter it.

That 'tis ſaid, the Lords cannot judge of the Privilege of the *Houſe of Commons*. They do not ſay they can; there may be no Occaſion: But from Precedents it appears they have done it by *Writ of Error*, and at the Deſire of the Commons.

That not only the Lords, but all Mankind, will judge of what is not their Privileges, if they claim that which neither Senſe, nor Reaſon, nor Law will juſtify.

That if the Commons ſay, To bring an Action at Law againſt Perſons not privileged is a Breach of Privilege, all Mankind will ſay it is not.

That this comes upon a Petition of five Men to the Lords, ſetting forth, They have been impriſoned by the Commons for bringing their Actions againſt the Conſtables of *Aylesbury*, and for ſuing out *Writs of Habeas Corpus*, and are at leaſt delayed in a *Writ of Error*.

The Queſtion lies in a narrow Compaſs;

Whether they have a Right to bring their Actions at Law? If ſo, it is Injuſtice to impriſon them for doing it;

A Hardſhip to deny them *Writs of Habeas Corpus*, and a greater to impriſon their Counſel and Agents, for endeavouring to procure them their Liberty.

That their Right is ſettled by a Judgment of Law, which will ever remain, till altered by the Legiſlature.

That a Declaration of one Houſe, or both Houſes, cannot alter the Law.

That the Lords intend not to diſturb the Commons in their Right of judging, only as to their own Members.

That the material Difference is between judging of the Right of the Electors, and the Right of the Elected.

And there may be Caſes, as here, where the Election is not in Queſtion, and yet the Electors receive great Damage in being denyed their Vote.

That the Right of Freehold is a Man's Birth-right, and cannot be taken from him, but by Law.

That if any Perſon be injured by any Officer whatſoever, he may, by Law, ſeek for Reparation: Otherwiſe, there is a Right without a Remedy, which is no Right at all.

In Anſwer to this, your Managers ſaid;

This Action is of the firſt Impreſſion; and 'tis a good Argument no ſuch Action lies, becauſe none was ever brought before; and eſpecially, becauſe Occaſions cannot be preſumed to have been wanting in every new Election of Members to ſerve in Parliament; nay, many more juſtifiable than in the late Caſe of *Aſhby* and *White*, where the Plaintiff was a Perſon likely to become chargeable to the Pariſh, and therefore removed by the Order of two Juſtices: And this, by the way, brings in Mind the printed Caſe of *Aſhby* and *White*, from the Report of the Lords Committees, where 'tis given in Anſwer, No ſuch Action before was brought, *That few had ſuch a true* Engliſh *Spirit as that Plaintiff*, though, it is ſaid, he was then a *Cobler*, and formerly had been an *Hoſtler*; and his Breaſt, it ſeems, was firſt warmed with this true *Engliſh* Spirit, which was rather a Spirit of Faction.

And it is worthy Obſervation, That in this Caſe the Coſts and Charges ſuſtained by *Aſhby*, or ſomebody for him, could not be leſs than 100*l.* more than the Coſts and Damages he recovered; ſo that 'twas *infelix victoria*, and no Benefit, but a Loſs to him. A Noble Lord was pleaſed to ſay further, That though he would not pretend to judge of the Commons Privileges, yet he might of what was not their Privilege. That Argument appears very ſtrange, ſince the Commons ſay, The Matter in Queſtion is their Privilege; and if the Lords ſaying 'tis not is ſufficient to diveſt them of it, the ſame Method may diveſt the Commons of all the reſt. The Commons are not going about to create new Privileges, but continue the Poſſeſſion of thoſe which their Predeceſſors ever enjoyed and exerciſed; and which they think neither this or any other future Houſe of Commons can ever depart from.

The Lords afterwards receded from the Generality of their ſecond and laſt Reſolutions.

They ſaid, the ſecond, ſo far as that every one who apprehends himſelf injured has a Right to ſeek Redreſs, was general; but what followed of an Action at Law was confined to the preſent Caſe.

So the ſixth, though it was general, was to be underſtood in this particular Caſe.

As to what was ſaid, That none but a ſuperior Court can take Cognizance of what another does, it was anſwered,

That when the Earl of *Shaftesbury* was committed by the Houſe of Lords for a Contempt, he was brought by a *Habeas Corpus* to the Court of *King's-Bench*: This was complained of to the Houſe of Lords; but they paſſed it over, being of Opinion, a Man might ſeek for Liberty where he would.

The Lords Judicature is too ſacred a Thing to be touched.

Your Managers thereupon returned, They wiſhed their Lordſhips had ſaid that at the beginning, it would have ſaved much Time, and ſhortened the Debates; for the Commons think their Privileges as ſacred as the Lords can their Judicature. Your Managers proceeded to ſay,

That as nothing offered at this Conference, or the laſt, was meant to ſubmit or leſſen the Privilege of the Commons; much leſs had any Thing in the Precedents in the Time of Queen *Elizabeth* and *James* I. produced at the laſt Conference, any Tendency that way.

And in Anſwer to ſome Objections made to thoſe Precedents, your Managers ſaid, The Commons did not take upon them to ſet forth the whole Proceedings, which are very long; but though they had not their Books there to make out the Quotations, can depend upon what they have ſtated to be true.

In the Precedent of Sir *Francis Goodwin*'s Caſe, cited by the Commons, there are no Omiſſions that, duly conſidered, can make that Caſe leſs to the Advantage of the Commons on this Occaſion: for if the Word *Order* be omitted, and taking the Anſwer to have been, *That they did conceive it did not ſtand with the Honour and Order of the Houſe to give Account of any their Proceedings or Doings*, that will little alter the Caſe, ſince it is plain, from the Entry in the Journal, the Commons, in returning this Anſwer, had Regard chiefly to the Precedent then quoted, 27 *Eliz.* when the Commons refuſed to give the Lords any Reaſons (though the Lords deſired them) for the rejecting at the firſt Reading a Bill the Lords had ſent down to the Commons: The Reaſons for the Commons Proceedings in this Caſe were prepared by themſelves, which they did communicate to the Lords; but the Lords were not to add or diminiſh: And though ſome Lords were preſent at the Commons delivering their Reaſons, there is a material diſtinction upon the Commons Journals of thoſe Lords being preſent *as Lords of the Council, and not as Lords of the Parliament.*

And the Noble Lord who took Notice of the Commons Omiſſion in the ſtating of this Caſe, and pretended to ſtate it fully and truly himſelf, omitted, That the new Writ was ordered to iſſue at the Requeſt of Sir *Francis Goodwin*, by his Letter; which, for the Satisfaction of the Houſe, was read and entered on the Journal, before any Queſtion for the new Election was made.

In that of the 28th *Eliz.* the Commons did not at the laſt Conference omit to take Notice of the Judges Determination; but it is juſtly ſtated as a Matter the Commons in the Examination of that Caſe were informed of, *but did not reſpect*; the Commons then aſſerting themſelves to have the ſole Determination of that Caſe.

Your Managers further urged,

Though the Commons do not ſubmit their Privileges, it may be proper to aſcertain what they claim, with the Reaſons why they are at this time the more concerned to oppoſe all Attempts upon them.

They do agree, the Right of Voting may be grounded upon Freehold, Charter, or Preſcription; and they do not pretend to draw them from the Courts of Common Law, when as ſuch they come there originally, immediately and directly in Queſtion.

But it is as plain, when the Right of Voting in an Election is the Thing originally, immediately and directly in Queſtion, that is ſolely cognizable in the Houſe of Commons, whoſe Determination is the ſtanding Rule for all Places; and if the Elections only were examinable by the Commons, and every Elector's Vote was examinable elſewhere, the Conſequence of ſuch different Determinations is fully ſtated, as delivered at the laſt Conference; which common and known Difference of coming originally or collaterally and incidentally in Queſtion, will anſwer the Caſe of the Earl of *Banbury*, where the Order of the Houſe of Lords came only incidentally in Queſtion upon an Indictment for Murder; nor is

is here any Injury in this Case that requires an Action, much less Damages; the Elector's Vote, upon every Election, depends upon its own true Foundation, as the Elector then stands intitled by Freehold, Charter, or Prescription, whether he was entitled, or was allowed or refused, at any former Election, or not.

Nor is Damage always necessary to a Remedy; that which is specifick, and gives the Right, is the most noble and compleat Remedy; Damages being only secondary, substituted by Way of Recompence where the other cannot be had, as appears by many Instances in the Law.

The Commons had great Reason to assert their ancient Right, and withstand these late and new Attempts upon the Constitution, which in every Step have been unprecedented, *viz.* the *Action*, the *Habeas Corpus*, and the *Writ of Error*.

The Action was never known, though the like Occasions have been as frequent as Elections, unless these *Aylesbury* Men have more refined Notions of their Rights and Privileges than others ever had.

As to the *Habeas Corpus*, the Argument is so much stronger, as Liberty is dearer than Property.

As to the Writ of Error, though the Lords Resolution is general, they now assert it to be of Right only in this Case.

As the Commons at the last Conference waved the Point of a Writ of Error being of Right or of Grace, so they do now, not by Way of Admission, but as 'tis not material in this Case.

But thus much may be observed, That this is not the Common Case, where the Question arises and falls under the Determination of the Judges of the Law, which is of Petitions of Right, and Writs of Error in the Courts of *Westminster* (as that of Sir *Thomas Armstrong* was) where the Queen is Party; there it is in the room of a Suit against the Crown, and if denied, the Party has no Remedy.

This Petition to the Queen, for a Writ of Error in Parliament, is properly a parliamentary Case, and is the same when the Queen is Party, or not; and seems some Remnant of our ancient Constitution, where all Petitions were to the King in Parliament, or to the King, and his Great Council, which was distinct from the House of Peers, and were examined by Triers, Whether fit for the Parliament to proceed upon or not; and to say, That upon such Examination they could not be rejected, is to say, That Examination was insignificant.

And if in this Case no Writ of Error lies, it cannot then be said, That the denying of it is an Obstruction of Justice, or contrary to *Magna Charta*.

That a Writ of Error lies not in any Proceeding on any *Habeas Corpus*, has been the uniform Opinion of former Times, as appears in the Case of the City of *London*, 7 *Jac.* reported by the Lord Chief-Justice *Coke*, in his Eighth Report, where one under an Arrest, for the Penalty in a By-Law, brought his *Habeas Corpus*; and the Judges took it for a Ground, That no Issue or a Demurrer could be joined upon the Return, nor could any Writ of Error lie upon their Award; and upon that, as a Principle, grounded their Resolution, *Fo.* 128.

And that this never came directly in Question, is, because a Writ of Error in such Case was never asked, much less had, upon a bare Commitment of any Court whatsoever: And it is hard to imagine, that there is any lawful Resort or Appeal for Liberty left untried at this Day, when so many, in all Times, have had Occasion to apply for it; especially considering the frequent Commitments of both Houses of Parliament.

That the Commons are not surprized to find the Lords make such a Shew of submitting their Privileges to the Courts of *Westminster*, when it is in order to draw all the Rights and Privileges of both Houses to their own final Determination; and much less when they consider how insignificant all Courts of Justice are rendered, while their Lordships exercise the last Resort in Judicature.

The several Attempts in the Way of Judicature, which have been made upon the Constitution, are so many Reasons for the Commons at last to make a Stand.

The very Form of the *Writ of Error* in Parliament is altered in a most material Part.

It is still returnable into Parliament generally; and the Judgment is entered, *per Cur' Parliamenti*.

But where the ancient Form, which appears in *Rastall's Entries*, *Fo.* 302. was, *Ut de Concilio & Advisamento Dominorum Spiritualium & Temporalium ac Communitatum in Parliamento nostro existentium ulterius pro Errore corrigendo fieri faciamus quod de jure, &c.*

Of late, as appears by a *Writ of Error*, printed in the Lord Chief-Justice *Saunders's* Second Report, *Fo.* 228. (and agreeable to that are all the Modern ones) that Word *(Communitatum)* is omitted.

This is only touched for an Instance, That even the highest Records, which ought to derive to us our Laws and Constitution pure and entire, have been corrupted.

And to proceeed to instance some Modern Innovations upon our Constitution, in Point of Judicature:

In *December*, 18 *Jac.* I. it appears by the Lords Journal, That an Appeal to the Lords from a Court of Equity, was by them acknowledged to be as new and unprecedented as any of the Attempts which occasion the present Conference.——

Here the Lords interrupted your Managers, affirming, That they were restrained from entering into Debate of their Judicature of Appeals from Equity, as foreign from the Subject Matter of the last Conference. But it was answered, and insisted by your Managers, That this was Part of the Matter offered at the last Conference.

And your Managers declared,

That they had more to offer, and were ready to proceed upon the Subject Matter of the last Conference in such Manner as they thought their Duty to the Commons of *England* required, if their Lordships thought fit to hear them: Whereupon the Lords did rise, and broke off the Conference.

Resolved, That the Proceedings of this House, in relation to the *Aylesbury*-Men, committed by this House for a Breach of Privilege, and the other Proceedings of this House in that Matter, are in maintenance of the antient and undoubted Rights and Privileges of the Commons of *England*.

Ordered, That all the Proceedings, in relation to the *Aylesbury*-Men, committed by this House, and the Report of the Lords Journal, and Reports of the Conferences, and of the free Conference, be printed.

Ordered, That *Mr. Speaker* do appoint the printing of the said Proceedings and Reports.

The Proceedings at the Court of Queen's-Bench *on the* Habeas Corpus.

A Complaint was made to the Honourable House of Commons, That since their last Resolutions in the Cause of *Ashby* and *White*, several Actions have been brought by *J. Paty*, *J. Oviat*, *J. Paton*, *H. Basse*, and *D. Horne*, and prosecuted by *R. Mead*, against the Constables of *Aylesbury*, in Breach of the Privileges of that Honourable House; whereupon they were pleased to order the Matter of the said Complaint to be heard at the Bar of their House, and ordered the Persons concerned to attend there; and appointed a Day accordingly.

The Parties appeared, (all but *Mead)* when the Witnesses were examined, and they severally called to the Bar of the House, and then withdrew. And, upon full hearing, the House were pleased to order their Speaker to issue out Warrants for committing them (being taken into Custody) to her Majesty's Gaol of *Newgate*.

In *Michaelmas* Vacation, 1704. they prayed a *Habeas Corpus* upon the Statute of 31 of *Cha.* II. upon the Return of which, all the Judges met and advised, whether they were bailable by that Statute, who were unanimously of Opinion that they were not; and accordingly they were remanded. And in *Hillary* Term following, they moved the Court of *Queen's-Bench* for a *Habeas Corpus* by the Common Law, which was granted, upon the Returns whereof the Judges of the *Queen's-Bench* desired the Assistance of the rest of the Judges, Whether they might be discharged? Who were all of Opinion, except the Lord Chief-Justice *Holt*, That they ought to be remanded: But it was argued in the *Queen's Bench* by Counsel, and afterwards the Judges delivered their Opinion *seriatim*.

Mr. *Page*, Mr. *Mountague*, Mr. *Lechmere*, and Mr. *Denton*, were Counsel for the Prisoners, and after the reading of the Return of the Commitment, Mr. *Page* said, That the Writ of *Habeas Corpus* is a Writ grounded on Common Law, and therefore this Court can bail all Persons, that by the Laws of *England* are bailable; that he did not say, but that the House of Commons hath Privileges that belong to them, and may commit for Breach of such Privileges; that he did now only inquire, if there be any Law for the Commitment of the Prisoners; and therefore the first Question he made, was, *If there was a Breach of Privilege returned?* Adding, That there being no Notice in the Return, that the House of Commons has any Privilege, he needed not argue, whether they have a Power or not, to restrain Men from suing in the Queen's Court. The Lord Chief-Justice *Holt* told Mr. *Page*, That the Question was, *If they were not to take Notice of their Power, though not returned to that Court?* Mr. *Page* answered, That though the Court would take Notice of any Power of the House, yet that not appearing in the Return, they could not judge of it, the Commitment being by the Speaker, and not by the House. The Lord Chief-Justice replying, That the Commitment was in pursuance of the Order of the House; Mr. *Page* subjoined, That then it should be shewn to be by the House, the Speaker being in the Chair, which was not mentioned in the Commitment. But this was over-ruled by the Lord Chief-Justice, who said, that by the House was to be understood the whole House sitting, with the Speaker in the Chair.

Mr. *Mountague* continued the same Objection to the Commitment, adding, That it did not appear, that the Prisoners were any ways related to the House of Commons, either as Members or Officers: That as to the Lord *Shaftesbury's* Case, he was a Member; that he agreed every Court must, and have Power to keep Order among themselves, but that to take a Man out of the House, who was not of the House, nor guilty of any Breach of Privilege, for aught appeared, by a Return, he knew no Law for it; that the Case assigned was, because the Prisoners had been guilty of bringing and prosecuting an Action, which he did not take to be a Crime by any known Law; that in the Case of the Constables of *Aylesbury*, there was a Judgment at Law judicially given, which could not be got over, until some Act of Parliament interposed; and the Law being so, that a Man might bring his Action, he did not know what Crime a Man could be guilty of that used this Law; that the Words of this Commitment went further, That bringing this Action is *contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges*; that they know not what this Word *Declaration* means, neither did they understand what that Breach of the Jurisdiction was; that as to the Words, *against the known Privileges of the House*, he was at a Loss what Action is against the Privilege of the House, because they can have no Privilege against Law, and he was sure it was not against Law to bring any Action. Then he took Notice, That the Commitment was during Pleasure; adding, That he had known Persons committed *per Mandatum Domini Regis* bailed, and therefore by stronger Reason ought they to be bailed, if committed by the House of Commons.

Mr. *Lechmere* inforced what had been alledged by the other Two, adding, That one Part of the Commitment, which set forth the Reasons of it, was for bringing an Action at Law, contrary to the Declaration of the House of Commons, in Opposition to which Declaration, he must oppose the Declaration of the Lords; that this Commitment being also said to be for a Contempt of the High Jurisdiction of the Commons, the Lords, in the Case of *Ashby* and *White*, had declared against it: Then he urged, That no other Court, save that of the Lords, and the Courts at *Westminster*, and other inferior Courts of *England*, can execute any Jurisdiction, touching any Actions at Law, and that Privileges which are against the known Laws of *England*, are in themselves void. Another Objection, or Exception, was, That the Continuance of the Imprisonment of the Prisoners was a new Commitment; That the *Habeas Corpus* is the Way the Queen takes to make Disquisition about the Liberty of her Subjects; That tho' both Houses of Parliament are proper Judges of their own Privileges, yet this Court has formerly judged of

their

their Privileges, to which Purpoſe he inſtanced in the Lord *Shafteſbury*'s Caſe, wherein Notice is taken of a Caſe, where an Original was filed againſt a Member ſitting in the Houſe; and that in the Caſe of the Lord *Banbury*, tho' the Lords Temporal and Spiritual had declared he was no Peer, yet, in this Court, when he was brought to be tried for Murder, and denied the Juriſdiction here, inſiſting upon his Peerage, this Court refuſed to try him, and allowed his Plea; That the Laws of Parliament are the Cuſtoms of Parliament; That there is no Precedent in Parliament to oppoſe or commit a Man for proſecuting for his Freehold or Franchiſe; but on the contrary, he believed, in the Rolls of Precedents there might be found a Caſe, where Bail had been allowed by this Court, upon a Commitment of the Houſe of Commons.

Mr. *Denton* excepted to the Return of the Commitment, alledging firſt, That the Warrant did not ſufficiently deſcribe the Crime; Secondly, That it did not appear, that the Party committed had Notice of the Vote or Declaration of the Houſe of Commons, for every Man is not bound to take notice of a Vote, becauſe it is but a temporary Thing; Thirdly, That it not appearing by his Return, that the Priſoner was a Commoner, he might, notwithſtanding any thing that appeared to the contrary, be a Lord, and then it muſt be agreed, the Commons had no Juriſdiction: That if it had been a general Commitment, without ſhewing the Offence particularly, and ſaid for a Breach of Privilege only, perhaps it had been a good Commitment; But here the Cauſe was ſet forth, and it appeared by the Judgment of the Lords, in the Caſe of *Aſhby* and *White*, that was no Cauſe at all of Commitment; that bailing the Priſoners in this Court, did not meddle with the Privileges of the Houſe of Commons, becauſe, if bailed, yet they are anſwerable to the Houſe, and are Priſoners *in Cuſtodia Legis*; that indeed Juſtices of the Peace can commit for a Riot without Bail, but this Power ariſes from an expreſs Act of Parliament for that Purpoſe; that the Queen herſelf cannot commit ſo as to bind the Power of the Law, but this Court can in ſuch Caſes, and always have, upon good Cauſe ſhewn, bailed, notwithſtanding ſuch Commitments: Concluding, upon the whole, for the Releaſe of the Priſoners.

The Counſel having done pleading, the Judges proceeded to give their reſpective Opinions.

Mr. Juſtice *Gould* and Juſtice *Powys* ſaid, They would chiefly inſiſt upon *Lex & Conſuetudo Parliamenti*, but they would firſt maintain the Form of the Warrant.

Obj. It was objected, That it is not ſet forth in the Return, how the Houſe of Commons have a Power to commit.

Anſ. We muſt take Notice of their Power without ſhewing it.

Obj. That this is a Commitment by the Speaker only, for that the Warrant does not run, *Ordered by the Knights, Citizens, and Burgeſſes in Parliament aſſembled*, according to the Precedent in my Lord *Shafteſbury*'s Caſe, 1 *Mod.* 144.

Anſ. That it is good, being according to their Form, and that it muſt be preſumed, the Speaker's Warrant was by Order of the Houſe.

Obj. There is no Seal to the Warrant, and that every Warrant ought to be under Hand and Seal, or elſe the Commitment is unlawful.

Anſ Courts don't uſe to commit by Warrant under Seal, but a Juſtice of Peace muſt; but they at the Quarter Seſſions don't commit under Seal; beſides, the Cuſtom of Parliament juſtifies this Warrant.

Obj. This is not like my Lord *Shafteſbury*'s Caſe, for he was a Member of the Lords Houſe; alſo this Commitment is for a Matter done out of the Houſe.

Anſ. Then they muſt never commit for Breaches of Privileges, for moſt are committed by others than their own Members, and for Matters out of the Houſe.

Obj. The Duration of the Impriſonment during Pleaſure, is illegal and uncertain.

Anſ. This is made uſe of for their Advantage, for they are diſcharged upon the Parliament's riſing; but alſo this Form is according to their Cuſtoms. And for Contempts to this Court we commit, without expreſſing for what Time, which is by Conſequence during Pleaſure.

Obj. This Commitment is for bringing their Action at Law, and for taking the due Courſe of Law.

Anſ. What is Privilege, but diſpenſing with the Law? The generality of Breaches of Privilege, are for taking the due Courſe of Law. As to the Caſe of *Aſhby* and *White*, that is objected, who knows whether this is the ſame Caſe? It does not appear to us to be the ſame, for there may be different Votes, and different Circumſtances in this Caſe; if you go to the ſcanning the Words of a Commitment, Who knows not that moſt Commitments that would hold for ſuch, do expreſs the Cauſe but ſhortly, and but juſt give a Hint? And the Law does preſume, that the higher Courts do underſtand what they do, and therefore are not tied up to ſuch Strictneſs as inferior Courts.

Obj. If this Court of *Queen's-Bench* can diſcharge a Man committed *per Mandatum Domini Regis*; they may upon a Commitment by any Member or Body of People whatſoever, if not legally committed.

Anſ. That Commitment is not good, becauſe the King does not act in Perſon, but hath committed all his *Power Judicial*, ſome in one Court, ſome in another, ſo that nobody is to be committed to Gaol upon the King's ſpecial Command. But what is done in Court, is of greater Authority, and the Law does adjudge it to be done by the King.

Obj. Shall the Houſe of Commons take a deſpotick Power to regulate how Actions ſhall be brought, and what Actions ſhall not be brought?

Anſ. Can we ſuppoſe that High Court would ſtop the Progreſs of the Common Law of *England?* 'Tis highly diſhonourable to have ſuch Thoughts, and nobody dares think ſo, or will preſume to ſay ſo; and People would laugh at one that ſhould ſay, The Houſe of Commons will take away the Liberties of the People.

There is no better Way to determine the Juriſdiction of either Houſe of Parliament, than by Uſage and Cuſtom, as the Bounds of Pariſhes are. That there is no Precedent or Caſe, nor ſo much as an Opinion yet cited, that the Courts of *Weſtminſter-Hall* have a Power to judge of the Authority of the Houſe of Commons, or that the Orders and Commitment of the Houſe of Commons can be diſcharged in *Weſtminſter-Hall*, nor ever before attempted to be diſcharged here, upon ſuch a Commitment by the Houſe of Commons; which is a good Argument, according to my Lord *Coke*'s Rule, that we want Power to do it.

'Twould be impoſſible for us to judge of the Privileges of the Houſe of Commons, for there are no printed Books of their Privileges, nor is there any Means by which we can attain to the Knowledge of them; but their Cuſtoms and Privileges are kept as *Arcana's* in the Rolls and Records of their own Houſe, and their Privileges depend altogether upon Precedents in Parliament; they do judge it is a Contempt and Breach of their Privileges; And who ſhall ſay nay? They are proper Judges of the Matter, and upon the Return, it appearing they were committed by the Houſe of Commons, our Juriſdiction ceaſes; and cited *Prynne*'s *Animadverſions*, *fol.* 4. and the King againſt Sir *John Elliot*, and others, in *Cr. Ch.* 181. (*Ante*, *Vol.* VII. *p.* 252, 253) That upon a Writ of Error in that Caſe, in the Houſe of Lords, it was reſolved, That this Court hath no Juriſdiction of a Miſdemeanor committed in Parliament.

Mr. Juſtice *Powel.* That this is a Caſe of the higheſt Conſequence, for it concerns the Privileges of the Houſe of Commons, the Liberty of the Subject, and the Juriſdiction of this Court; 'tis the firſt Caſe of this Nature, for the Lord *Shafteſbury* was a Member of the Houſe, and there may be a greater Juriſdiction in ſome Caſes over their own Members, than over Strangers: However, they had not any Authority upon the Return, for they are committed by another Law than we proceed by; and to be committed by one Law, and to judge of the Commitment here by another Law, would be a ſtrange Thing: For the Houſe don't commit by the Authority of the Common Law, but by another Law, *Legem & Conſuetudinem Parliamenti*; for there are in *England* ſeveral other Laws, beſides the Common Law, *viz.* the Eccleſiaſtical Law, the Admiralty Law, *&c.* and there is the Law and Cuſtoms of Parliament, where they have particular Laws and Cuſtoms for their Directions.

To ſtate Judicature will help to clear this Caſe. The Houſe of Lords have a Power to judge by the Common Law, but not Originally, but a Dernier Reſort upon Writs of Error and Appeals; and for that Reaſon it is provided by the Conſtitution, for the Judges to give their Aſſiſtance, which they are bound to do. But they have another Law, *viz. Lex & Conſuetudo Parliamenti*, which the Judges are not to aſſiſt in, or give any Opinion; and I dare ſay, the Houſe of Lords would take it ill, ſhould they meddle or adviſe therein, for they have their Privileges in their own Rolls and Books.

That the Commons have alſo a Judicature, not by the Common Law, but do judge of Breaches of Privileges, and Contempts to their Houſe, *ſecundum Legem & Conſuetudinem Parliamenti*, 4 *Inſt.* 23. and by this Law theſe Perſons are committed, and now are brought to be diſcharged by the Common Law. The Reſolution of the Commons upon the Breach of Privileges is a Judgment, and the Commitment an Execution of it, which cannot be controuled; for this would be to draw it *ad aliud Examen*, and then the Commons would not be ſupreme Judges of their own Privileges.

That the Reſolution in the Houſe of Lords, in the Caſe of *Aſhby* and *White*, does not bind the Houſe of Commons, nor determine their Privileges; for they judged of the Privileges of the Commons as an Incident to the Action, and one Court may judge of a Matter within the Juriſdiction of another Court, when without it they cannot determine the Caſe before them; as this Court may of Admiralty, or Eccleſiaſtical Juriſdiction, if the Queſtion ariſes in an Action depending in this Court. But ſuch a Determination will not bind another Court, which has an original Cognizance of that Matter, as in Ejectment now depending in the Common Pleas, the general Iſſue pleaded, and a ſpecial Verdict; the Queſtion there is, If a Quaker's Marriage be good? Now if it ſhould be held in that Court a void Marriage, and the Judgment ſhould be affirmed in this Court, and upon a Writ of Error in the Houſe of Lords, it ſhould be reverſed, this would not bind the Eccleſiaſtical Court, but they might proceed there for Incontinency; and if they ſhould proceed there to Excommunication, finding it a void Marriage, and the Party taken by the *Excommunicato Capiendo* ſhould bring this *Habeas Corpus* upon the Return of it, we could not diſcharge him. But this is a Matter originally ariſing in Parliament.

That this Court may keep other inferior Courts within their Juriſdictions, but not the Houſe of Commons; for no Prohibition was ever granted to that Court, though they exceeded Juriſdiction: So if the Houſe of Lords do exceed, or take Cognizance of Matters in the firſt Inſtance, no Prohibition would lie; for no inferior Court can prohibit a ſuperior: And no Prohibition was moved here, nor could we have granted it; for the Houſe of Commons is ſuperior to all ordinary Courts of Law. When the Houſe of Lords took Cognizance, and proceeded upon the Petition of my Lord *Wharton*, complaining of an Order of the Court of Exchequer, for filing the Record of a Survey of the Honour of *Richmond*, and Lordſhip of *Middleton*; which the Houſe of Commons, upon the Petition of Mr. *Bathurſt*, complaining of this Proceeding, *Jan* 28, 1703. Reſolved to be without Precedent, and unwarrantable, and tending to the ſubjecting all the Rights and Properties of the Commons of *England* to an illegal and arbitrary Power: They alſo Reſolved then, That it is the undoubted Right of all the Subjects of *England* to make uſe of the Record; as they ought by Law to have done, before the ſaid Proceeding of the Houſe of Lords. *Vide poſtea.*

In 4 *Inſt.* 50. It doth not belong to the Judges to judge of any Law, Privileges, or Cuſtoms of Parliament; for the Laws, Cuſtoms, Liberties, and Privileges of the Parliament, are better to be learned out of the Rolls of Parliament, and other Records, and by Precedent and continual Experience, than can be expreſs'd by any one Man's Pen.

In 4 *Inſt.* Every Court of Juſtice hath Laws and Cuſtoms for its Direction; ſome by the Common Law, ſome by the Civil and Canon Law, ſome by particular Laws and Cuſtoms; ſo the High Court of Parliament *ſuis propriis Legibus & Conſuetudinibus ſubſiſtunt.* That Judges ought not to give any Opinion of a Matter of Parliament, becauſe it is not

not to be decided by the Common Laws, but *secundum Legem & Consuetudinem Parliamenti*; and *Coke* says, *Ista Lex ab omnibus est querenda, à multis ignorata, à paucis cognita.* Now who shall adjudge this no Breach of Privilege, when the House of Commons, who are the proper Judges of their own Privileges, have adjudged it to be a Breach of their Privilege?

That it is to no purpose to talk of the Form of the Commitment, if they have not Jurisdiction; but there is no such Thing as Seals of the House of Commons, and this Commitment during Pleasure does not tend to *Villenage* or *Slavery*, as was objected by Mr. *Mountague*, unless there could be a perpetual Parliament, which there cannot be now, so that might have been spared; and he was glad *Villenage* and *Slavery* were so much forgot, that Counsel did not know what it was, or at least, did not know how to apply it.

Obj. But it was objected, That they do no more in bringing their Action, than what is adjudged by the House of Lords they may lawfully do.

Ans. That a good Correspondence is to be wished for between the Two Houses by all true Lovers of their Country; but when they do not agree, there is no Way to settle their Jurisdictions, but first by *Conference*, and then by *free Conferences*; and the Lords might have desired a *free Conference*, when the Commons took this Matter under Examination, as the Commons did with the Lords in the Case of *Skinners*, *Coke Rep.* 13. But it may be said, What if one House persists, and the other does so too? As to that, all *free Conferences* are open, and the People of *England* may be present, and will be Judges, and they will not chuse such Persons again as do commit, or do insist upon pretended Privileges: So if the Lords do exceed their Jurisdiction, the Commons may desire a *free Conference*; and if they do persist, the People will be Judges, and will chuse such a Parliament as will deal with them.

That the Lord *Shaftesbury*'s Case is an Authority in Point of Want of Jurisdiction in that Court; and though he was a Member of the House, it does not alter the Case here, for there are many Instances that the *House of Commons* commit others than their own Members: There have been many Instances in both Houses, that they may commit Persons out of the House. 4 *Instit.* 23, 24. *Moore* 57. *Ferrar*'s Case in *Dyer* and *Plowden*, is a remarkable Instance, that no other Punishment could be inflicted for a Breach of Privilege; for he did not know that Indictment would lie for Breach of Privilege; and it would be a strange Thing that the House should have Power to examine into and judge of a Breach of Privilege, and yet have no Power to punish; for what signifies the Power to judge, without the Power to punish?

Lord Chief Just. *Holt.* That this Case does depend upon the Vote that is recited in the Speaker's Warrant of Commitment, which was to this Effect:

That it did appear to that Honourable House, that *John Paty* of *Aylesbury*, has been guilty of commencing and prosecuting an Action at Common Law, against *W. White* and others, late Constables of *Aylesbury*, for not allowing his Vote in an Election of Members to serve in Parliament, contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

That he own'd himself to lie under two Disadvantages; one, That all the rest of the Judges do agree with his three Brethren, from whom he had the Misfortune to dissent. The other, That he oppos'd the Votes of the *House of Commons*, and did begin to think he might justify himself in resigning his Opinion to the rest; but that he valued more the Dictates of his own Conscience, than any Thing he could suffer in this World, and by that and his Judgment (tho' it were but weak) he would be guided.

That this was not such an Imprisonment as the Freemen of *England* ought to be bound by. And that it did highly concern the People of *England*, not to be bound by a Declaration of the *House of Commons* in a Matter that before was lawful.

That neither House of Parliament has a Power separately to dispose of the Liberty or Property of the People, for that can't be done but by the Queen, Lords, and Commons; and this is the Security of our *English* Constitution, which cannot be altered but by Act of Parliament.

That there is a Crime charged by the vote for commencing an Action; but sure that cannot be a Breach of Privilege, for an Original may be filed against a Member of Parliament during the Time of Privilege, so that you don't molest him, and it is no Breach of Privilege; as it was resolved in Sir *George Binion*'s Case, 14 *Ch.* II. for otherwise, by Lapse of Time in several Actions, he may be barred by the Statute of Limitations; so that if it be not a Breach of Privilege to commence an Action against a Member of Parliament, then how can it be so to commence an Action against the Constable of *Aylesbury?*

But then the Vote goes further, and says, For commencing and prosecuting an Action: But prosecuting may not be a Breach of Privilege neither; for entering and continuing is prosecuting, which may be done without a Breach of Privilege.

That it does not appear, that the Constable of *Aylesbury* has any Privilege above another Person, for no Man is presumed to be privileged, unless it be shewn; and he has no Privilege as Constable.

That the Vote goes yet further, and says, For not allowing his Vote in an Election of Members to serve in this present Parliament: But this can be no Crime.

That he admitted they were Judges of their own Privileges; but the Law must also be observed. By 2 *Ric.* III. *Fol.* 9. it appears, it was no Crime by the Common Law, to bring an Action, though never so malicious, false, or groundless, where it is adjudged, that there is no Punishment for it, because it was in a Method of Justice; but when Business began to increase, Costs were given against the Plaintiff, by 23 *Hen.* VIII. for bringing an Action causelessly. A Peer cannot have an Action of *Scandalum Magnatum*, where there is no Cause for the Action wherein he is charged with Scandal; so much the Law regarded the Right of bringing Actions.

That when Subjects have such a Right to bring Actions, it cannot be stopt by Privilege of Parliament, for no Privilege of Parliament can intend so far as to destroy a Man's Right.

That it has been adjudged a good Action by the Law of the Land, and that Damages may be recover'd for the Injury, in not allowing his Vote; and this Action is the same as *Ashby* and *White*, which lies before us; and if we consult the Records, we shall find it to be the same.

That the latter Part of this Vote is, That the prosecuting this Action is contrary to the Declaration, in high Contempt of the Jurisdiction, and in Breach of the known Privileges of this House.

That the Privileges of the House of Commons are limited, for there is no Privilege in case of Treason, or Felony, or Breach of the Peace; for a Justice of the Peace may commit a Member for Breach of the Peace, and if he should be indicted for it, his Plea of Privilege would not be allowed.

That nothing can make a Privilege, that was not so before, (for the Breach of which a Man shall lose his Liberty) but an Act of Parliament.

That each House is Judge of their own Privileges, because they are more conversant with the Privileges of their own House; so the Judges decline it; but if they come incidently before the Courts of Law, they must determine it there.

That suppose the House of Commons had not meddled in this Matter, but the Defendants in this Action had pleaded to the Jurisdiction of this Court, that this was a Matter examinable only in the Parliament, and the Plaintiff had demurr'd, we must then have determined it, and be Judges then of their Privileges.

Coke's 1 *Inst. Lex & Consuetudo Parliamenti ab omnibus querenda, à multis ignorata, à paucis cognita*; and the Reason 'tis known by so few is, because they do not seek for it. We are bound to take Notice of the Customs of Parliament, for they are Part of the Law of the Land; and there are the same Methods of knowing it, as the Law in *Westminster-Hall.*

In *Clarendon*'s History, Part 1. Fol. 310. He was Lord Chancellor of *England*, a Man of great Probity and Learning; his Observations touching Privileges of Parliament are these:

" It is not to be believed, how many sober, well-minded Men, who " were real Lovers of the Peace of the Kingdom, and had a full Submis- " sion and Reverence to the known Laws, were imposed upon, and had " their Understandings confounded, and so their Wills perverted by the " mere mention of Privilege of Parliament; which, instead of the plain " and intelligible Notion of it, was, by the Dexterity of those *Beutifeus*, " and their Agents, and the Sottishness of the People, rendered such a " Mystery as could be only explain'd by themselves, and intended as far " as they found necessary for their Occasions, and was to be acknowledged " a good Reason for any Thing that no other Reason could be given for. " We are, say they, and have been always confess'd, the only Judges of " our own Privileges, and whatsoever we declare to be our Privileges are " such; otherwise, whosoever determines that it is not so, makes him- " self Judge of that whereof the Cognizance belongs only to us. And " this sophistical Riddle perplexed many, who, notwithstanding the des- " perate Consequence they saw must result from such Logic, taking the " first Proposition for true, which being rightly understood, is so, have " not been able to wind themselves out of the Labyrinth of the Conclu- " sion: I say, the Proposition rightly understood, they are the only " Judges of their own Privileges; that is, upon the Breach of those Pri- " vileges which the Law hath declared to be their own, and what Pu- " nishment is to be inflicted upon such Breach; but there can be no Pri- " vilege of which the Law doth not take Notice, and which is not plead- " able by and at Law."

The same Part, *page* 312. " But that their being Judges of their Pri- " vileges should qualify them to make new Privileges, or that their " Judgment should create them such, as it was a Doctrine never before " heard of, so it could not but produce all those monstrous Effects we " have seen: When they have assembled to swallow all the Rights and " Prerogatives of the Crown, the Liberties and Lands of the Church, " the Power and Jurisdiction of the Peers; in a Word, the Religion, " Laws, and Liberties of *England*, in the bottomless and insatiable Gulph " of their own Privileges." That he had yet a greater Authority than this, the Opinion of King *Charles* I. in his Answer to the nineteen Propositions from both Houses of Parliament, in Lord *Clarendon*'s History, first Part, 498. which Answer is in the King's own Words in *Rushworth*'s Collections, 3 Vol. Part the 1st. 725, 730, 731.

" That though the bringing this Action be contrary to the Declara- " tion, it does not follow, therefore, that it must be a Breach of Privi- " lege; for this Vote has not obtained the Authority of a Law, and they " have no more Power to declare the Law, than they have to make a " Law."

That if bringing an Action is a Breach of Privilege, why was not *Ashby* laid hold on? He prosecuted to Judgment and Execution; but these Persons are committed for commencing an Action.

How can the bringing an Action in one Court be a Contempt to another?

If a Man that has a Privilege in one Court is sued in another, he shall have his Privilege: But it is no Contempt in the Plaintiff that he sues in another Court, and there is no Punishment for it; much less can it be a Contempt to the House of Commons, where no Action can be brought.

That he admitted, the House of Commons may commit any Person, and for any Crime, because they may impeach any Person for any Crime whatsoever; but that course is seldom taken, unless where the Crime requires a strict Prosecution, and very much concerns the Publick.

That the Lord *Shaftesbury*'s Case is not like this; for he was a Member of the House, and it was for a Contempt in the House.

The House may at any time commit a Man for a Contempt in the Face of the House; whereas the Prisoners are committed not for a Breach of Privilege or Contempt, but because they have brought their Actions which are legal, and so adjudged by the Lords in the Writ of Error.

That he did not question but that the Warrant was a good Warrant.

That *Lex & Consuetudo Parliamenti* is as much the Law of the Land, as any other Law. 'Tis the Law gives the Queen her Prerogative: 'Tis

the Law gives Juriſdiction to the Houſe of Lords; and 'tis the Law limits the Juriſdiction of the Houſe of Commons.

That if the Eccleſiaſtical Court exceed their Juriſdiction, a Prohibition will lie; and even the King's Acts, if contrary to Law, are void.

He inſiſted that the Lord *Banbury*'s Caſe was a great Authority for him.

He petitioned the Houſe of Lords to ſit, and alſo to have the King's Leave. The Lords determined he was not a Lord; yet when he was brought upon an Indictment by the Name of *Charles Knowles*, Eſq. he here pleaded, and inſiſted, That he was a Peer; which Plea was allowed, and he was not tried.

Tho' the Lord Chief Juſtice was ſo clear in his Judgment, yet the other three Judges being of a contrary Opinion, the Majority prevailed; and the Priſoners were remanded to *Newgate*.

Mr. *Lechmere* moved, That the Judgment might be entered upon Record.

Lord Chief Juſtice *Holt* aſked the Clerk of the Crown, How they entered the Judgment in theſe Caſes? Who anſwered, That they never make up any Roll, but only enter a *Remittitur* generally upon the Back of the Writ. Lord Chief Juſtice *Holt* told him, That of right he ought to make up a Roll, (and as he was informed he had the Fees allowed for making up the Roll), and then bid the Counſel come to his Chambers, and bring Precedents; and afterwards the Judgment was entered in this Manner.

The Judgment: *Quia Cognitio Cauſæ Captionis & Detentionis prædict' non pertinent ad Curiam Dominæ Reginæ, Ideo Remittitur.*

Upon the Commitment of theſe five *Aylesbury* Men, and their being remanded to *Newgate* again, the Houſe of Lords drew up the following Repreſentation and Addreſs, *viz.*

The Humble Repreſentation and Addreſs of the Right Honourable the Lords Spiritual and Temporal, in Parliament aſſembled, preſented to her Majeſty the fourteenth Day of March, 1704, *and her Majeſty's moſt gracious Anſwer thereunto: With their Lordſhips Thanks for the ſame. Together with the Papers annexed to the ſaid Addreſs, and laid before her Majeſty*.*

Die Martis 13 *Martii*, 1704.

WE your Majeſty's moſt Dutiful and Loyal Subjects, the Lords Spiritual and Temporal in Parliament aſſembled, are under an unavoidable Neceſſity of making our humble Application to your Majeſty, upon an Occaſion, which, as it is very grievous to us, ſo we fear it may be uneaſy to your Majeſty: But the Proceedings of the Houſe of Commons, in relation to five Burgeſſes of the Town of *Aylesbury*, *John Paty*, *John Oviat*, *John Paton*, *Henry Baſſe*, and *Daniel Horne*, have been ſo very extraordinary, that the Conſequences of ſuch Proceedings may prove ſo fatal to the Properties and Liberties of the People of *England*, and ſo directly tend to the Interruption of the Courſe of Juſtice, to the eluding the Judicature of Parliament, and to the Diminution of your Royal Prerogative, that we cannot anſwer it to your Majeſty, to the Kingdom, and to ourſelves, without ſetting them before you in a due Light.

One *Matthew Aſhby*, a Burgeſs of the Borough of *Aylesbury*, brought an Action upon the Caſe at Common Law, againſt the Conſtables of the Town of *Aylesbury* (being the proper Officers to return Members to ſerve in Parliament for that Place) for having, by contrivance, fraudulently and maliciouſly hindered him to give his Vote at an Election.

In this Action a Verdict was found for him; but Judgment was given againſt him in your Majeſty's Court of *Queen's-Bench*, which was reverſed upon a Writ of Error brought in Parliament; where he obtained Judgment to recover his Damages for the Injury, and afterwards had Execution upon that Judgment.

The five Perſons above-named being Burgeſſes of the ſame Borough, and having (as they conceived) had the like Wrong done them by the Conſtables there, and ſuppoſing the Law to be equally open to all *Engliſhmen*, did ſeverally commence and proſecute Actions againſt thoſe Officers, in order to recover their Damages.

And for ſo doing, they were ſent for to the Bar of the Houſe of Commons, and committed Priſoners to *Newgate*, the fifth Day of *December* laſt, during the Pleaſure of the Houſe of Commons, as having acted contrary to the Declaration, in Contempt of the Juriſdiction, and in Breach of the Privileges of that Houſe.

Theſe Proceedings are wholly new and unprecedented. It is the Birthright of every *Engliſhman*, who apprehends himſelf to be injured, to ſeek for Redreſs in your Majeſty's Courts of Juſtice: And if there be any Power can controul this Right, and can preſcribe when he ſhall, and when he ſhall not be allowed the Benefit of the Laws, he ceaſes to be a Freeman, and his Liberty and Property are precarious.

The Crown lays Claim to no ſuch Power; and we are ſure the Law has truſted no ſuch Authority with any Subjects whatſoever.

If a Man miſtakes his Caſe, in believing himſelf to have a good Cauſe of Suit, when he has not; if he miſtakes his Court, by applying to an incompetent Juriſdiction, he will fail of Relief, and be made liable to Coſts, but to no other Puniſhment: He is not guilty of a Crime, nor is it a Contempt of the Court that has the proper Juriſdiction.

But theſe Men were guilty of no Miſtake: the Point of Law was ſettled by the Judgment of that Court, which is allowed to be the laſt Reſort; and this will continue to be the Law, 'till it be altered by the Legiſlative Authority. They ſaw their Neighbour quietly and unmoleſted reap the Fruit of the Judgment he had obtained; and yet, for purſuing the ſame Remedy, they are condemned to an indefinite Impriſonment, during the Pleaſure of the Houſe of Commons.

This Method does introduce an Uncertainty and Confuſion never before known in *England*. The moſt arbitrary Governments cannot ſhew more direct Inſtances of Partiality and Oppreſſion.

The Point of Law is judicially ſettled; and yet the Houſe of Commons take upon them to puniſh Men by Impriſonment, for endeavouring to have the Benefit of what is ſo eſtabliſhed for Law.

We humbly obſerve to your Majeſty, That the firſt Thing they alledged in the Warrant of Commitment, as the Offence of theſe five Perſons, is, That thoſe Actions were brought contrary to a Declaration of the Houſe of Commons.

It was never yet heard, (when there was a Houſe of Lords in being, and a King or Queen upon the Throne) that the Houſe of Commons alone claimed a Power, by any Declaration of theirs, to alter the Law, or to reſtrain the People of *England* from taking the Benefit of it; nor have their Declarations any ſuch Authority, as to oblige Men to ſubmit to them at the peril of their Liberty.

If they have ſuch a Power in any Caſe, they may apply it to all Caſes as they pleaſe; for when the Law is no longer the Meaſure, Will and Pleaſure will be the only Rule.

The Certainty of our Laws is that which makes the chief Felicity of *Engliſhmen:* But if the Houſe of Commons can alter the Laws by their Declarations, or (which is the ſame thing) can deprive Men of their Liberty, if they go about to take the Benefit of them, we ſhall have no longer Reaſon to boaſt of that Part of our Conſtitution.

The next thing alledged in the Warrant is, That the commencing and proſecuting theſe Actions was a Contempt of the Juriſdiction of the Houſe of Commons.

Such a Juriſdiction was never claimed by the Houſe of Commons, 'till upon this Occaſion; and if this Novelty of a Juriſdiction be founded on their new Authority of Declaring, they will ſtand and fall together.

The Houſe of Commons have for a long time exerciſed a Juriſdiction over their own Members, by allowing or diſallowing their Elections, as they ſaw Cauſe: But they have never before entertained a Notion, That they had a Juriſdiction over their Electors, to determine (finally and excluſively of all other Court) the particular Rights of thoſe to whom they owe their Being.

Your Majeſty's Royal Writ commands, That the ſeveral Electors make choice of Perſons to repreſent them in Parliament, in order to do and conſent to ſuch things as ſhould be ordained there, relating to the State and Defence of the Kingdom and the Church, for which the Parliament is called: And they obey the Command, in proceeding to chuſe Members for the Parliament then ſummoned; but neither the Writ which requires them to chuſe, nor the Indenture by which the Return is made, import any thing whereby it may be inferred, That the Electors put into the Power of their Repreſentatives their ſeveral Rights of Election, to be finally diſpoſed of at their Pleaſure.

It was an Intereſt veſted in them by Law before the Election, and which the Law will preſerve to them, to be exerciſed again in the like Manner, when your Majeſty ſhall be pleaſed to call another Parliament.

It was not poſſible for the Electors to ſuſpect, that ſuch a Pretence would ever be ſet up by their Repreſentatives, when in the Courſe of ſo many Ages the Houſe of Commons had never taken upon them to try or determine the Right of any particular Elector, unleſs incidently, and only in order to decide a Queſtion, of the Title of ſome Member of their own Houſe to ſit amongſt them.

The Right of Election is a legal Intereſt incident to the Freehold, or founded upon Cuſtom, or the Letters Patents of your Majeſty's Royal Anceſtors, or upon particular Acts of Parliament, and muſt be tried and determined like other legal Intereſts: And this Conſideration does manifeſtly ſhew the Abſurdity of pretending, That ſuch Rights can be decided by the Houſe of Commons, where there is neither a Power of adminiſtering an Oath, in order to diſcover the Truth, nor a Power of giving Damages, which is the only Reparation the Elector is capable of receiving in ſuch a Caſe. Therefore, if the Electors, when they are deprived of their Rights, have no Place to reſort to but the Houſe of Commons, the Right of Election would be a Right without a Remedy, which indeed is no Right at all.

And it is put into the Power of the Officers, who have the Return of Members to ſerve in Parliament, to reject the Votes of as many Electors as they pleaſe, without being liable to make any Reparation in Damages to the Parties; which is a Notion not very likely to preſerve the Freedom and Impartiality of Elections.

The third thing alledged againſt theſe Men in the Warrant of Commitment is, That by bringing theſe Actions they have broken the Privilege of the Houſe of Commons.

A Breach of the Privileges of Parliament is certainly a great Offence; and, of all others, the Houſe of Lords ought to be the laſt who ſhould go about to leſſen or excuſe it, as having a like Intereſt with the Commons in the Preſervation of the Privileges of Parliament.

But however it might ſeem the Intereſt of the Lords to be ſilent, while the Houſe of Commons are ſetting a-foot new Pretences of Privilege, becauſe they may ſhare in the Advantage; yet we think it our Duty and our Intereſt to do all we can to preſerve the Conſtitution entire, and not to ſit quiet when we ſee Innovations attempted, which tend to the Diminution of the Rights of the Crown, or to the Prejudice of the Subject: Becauſe the beſt and ſureſt way to preſerve the rightful Privileges of Parliament, is to abide by thoſe that are certain and known; and it is not in the Power of either, or both Houſes, to create new Privileges to themſelves.

It never was thought a Breach of the Privileges of Parliament, to proſecute an Action againſt any Man who was not entitled to Privilege of Parliament; and therefore, ſince the late Conſtables of *Aylesbury* had no Title to Privilege of Parliament, at the Time when thoſe Actions were commenced or proſecuted, we cannot imagine upon what Foundation the purſuing theſe Actions can be voted a Breach of Privilege by the Houſe of Commons.

It ſeems very neceſſary it ſhould be known upon what Rule this Pretence is grounded, That the People of *England* may be at a Certainty,

* *Die Mercurii*, 14 *Martii*. It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Repreſentation and Addreſs this Day preſented to her Majeſty, with her Majeſty's moſt Gracious Anſwer thereunto, and the Thanks of this Houſe for the ſame, together with the Papers annexed to the ſaid Repreſentation and Addreſs, and laid before her Majeſty, ſhall be forthwith printed and publiſhed. *Matth. Johnſon*, Cler' Parliamentor'.

and

and see some Limits set to the Claims of Privilege: To serve the turn, it has been said, There are privileged Cases, as well as privileged Persons; but no Instance has been produced, whereby this Distinction can be applied to justify these Commitments.

Actions at Common Law have been brought upon false Returns and double Returns of Members to serve in Parliament, as in the Cases of Sir *Samuel Barnardiston* and Mr. *Onslow*, which proceeded to Judgment, and a Writ of Error was brought in one of them, and the Plaintiffs could not prevail in either of those Suits; and yet it was never pretended, That the commencing or prosecuting those Actions was a Breach of Privilege of Parliament, nor were the Persons concerned in them imprisoned or censured, tho' there was a much greater Colour for such Pretence in those Cases, because the Question there directly concerned the Right of sitting in Parliament; and consequently those would have been indeed privileged Cases, if any such Distinction had been once thought of in those Days: Whereas in the Actions brought by these five Men, neither the Plaintiffs nor Defendants were Members of Parliament, nor did the Actions relate in any manner to the Right of sitting there.

The Opinion of the House of Commons at that time was very different from what it is now.

When the Judgment of the King's-Bench (where Sir *Matthew Hale* sat then Chief Justice) which passed in favour of Sir *Samuel Barnardiston*, That the Action was maintainable, was reversed in the Exchequer-Chamber, the House of Commons was so far from thinking it for their Advantage, to have their Members deprived of the Benefit of the Common Law, that in the Year 1679 a Committee was appointed to enquire touching the reversing that Judgment, and by whose Procurement and Sollicitation, and by what Ways and Means the same was reversed, and the Names of the particular Judges that were concerned: And when afterwards that Judgment in the Exchequer-Chamber was affirmed in Parliament, the House of Commons never thought themselves secure against the Corruptions of the Officers who were to take the Poll, and make Return at Elections, till they hadgot an Act in the seventh and eighth Years of the late King, which gave a Remedy in *Westminster-Hall* for false and double Returns; so little contented were they in their own cases with the Jurisdiction of the House of Commons, and the Remedy to be had there, which now they so fiercely contend their Electors should entirely acquiesce in: And we cannot but think it manifest Partiality in those Gentlemen, to go about by such violent Means to deprive their Electors of recovering of Damages, when they are wronged in being deprived of giving Votes, since they thought it necessary for themselves to have that Advantage when they are injured in their own Elections.

The Sufferings of these unfortunate Men have not ended here, and the Rights of the free-born Subjects of *England* have received a further and no less dangerous Wound in their Persons.

These five Men having endured a long and chargeable Imprisonment, and despairing of their Liberty any other way, were advised to sue out Writs of *Habeas Corpus* returnable in your Majesty's Court of Queen's-Bench, hoping to obtain their Discharge by the Help of that Court, where the Judgment ought to be given according to the Laws of the Land, without regard to any Votes or Declarations, or Commands to the contrary: But this Endeavour proved unsuccessful, and they were remanded to *Newgate* by three of the Judges of that Court, contrary to the Opinion of the Lord Chief Justice *Holt*.

We shall not presume to offer any Opinion to your Majesty, upon Occasion of this Judgment, at present, because it is not regularly brought before the House; and we only mention it, because the House of Commons took such offence at the bringing these Writs of *Habeas Corpus*, that, on the twenty-fourth of *February* last, they voted, That whoever had abetted, promoted, countenanced, or assisted the Prosecution of those Writs, were Disturbers of the Peace of the Kingdom, and had endeavoured, as far as in them lay, to overthrow the Rights and Privileges of the Commons in Parliament.

This is a heavy Charge; and if it be so criminal a thing for a Prisoner to pray a *Habeas Corpus*, it does not only affect those who are at present concerned, but ought to touch every Commoner of *England* in the most sensible manner.

Liberty of Person is of all Rights the most valuable; and of which, above all other things, the Law of *England* is most tender, and has guarded with the greatest Care, having provided Writs of several kinds, for the Relief of Men restrained of their Liberty upon any Pretence, or by any Power whatsoever; that so in every Case they may have some Place to resort to, where an Account may be taken of the Reason and Manner of the Imprisonment, and the Subject may find a proper Relief according to his Case.

No Crime whatsoever does put an *Englishman* into so miserable a Condition, that he may not endeavour, in the Methods of Law, to obtain his Liberty; that he may not, by his Friends and Agents, sue out a *Habeas Corpus*, and have the Assistance of Sollicitors and Counsel to plead his Cause before the Court where he is to be brought.

The Court is bound by the Law to assign him Counsel, if there be Occasion, and to give Judgment upon his Case, as it stands upon the Return of the *Habeas Corpus*, and to remand, discharge, or bail the Prisoner, as the Cause of his Commitment appears there sufficient or insufficient in Law; and if what is alledged as the Cause of Imprisonment appears to be no Crime in Law, it is not the Authority of those who made the Commitment that can excuse that Court for remanding the Prisoner.

This is the Law of *England:* But according to these Resolutions of the House of Commons, if a Man has the Unhappiness (tho' through Ignorance or Mistake) to do an Act which shall be voted a Breach of Privilege, he becomes in a worse Condition than any Felon or Traitor; his Confinement makes it impossible for him in Person to solicit and procure a *Habeas Corpus*, and if any have Charity enough to assist him, or to plead for him, in order to shew to the Court the Insufficiency of the Commitment in Matter of Law, they become liable to lose their own Liberty, and are involved in the same Guilt of Breach of Privilege: So that let the Imprisonment be upon the most trifling Occasion imaginable, if it be by Order of the House of Commons, every Commoner must submit to it without Redress; no Friends can help them, no other Authority can deliver them, till your Majesty shall put an End to that Session.

The Lords have as just a Concern, as the House of Commons can have, to maintain the Authority, and keep up the Awe of Parliamentary Commitments: And they will always do it, as far as Justice and the Usage of Parliaments will allow.

There have been Cases, particularly that of the Earl of *Shaftesbury*, where Persons committed by the House of Lords, even Members of that House, have sued out Writs of *Habeas Corpus*; and upon the Returns of those Writs, have been brought before the Court of King's-Bench, and their Counsel have been heard on their behalf: And yet no Censure ever passed upon them for these Endeavours to obtain their Liberty, or upon their Agents, Sollicitors, or Counsel.

The House of Commons formerly acted with more Reserve upon so nice an Occasion, as the Liberty of the Subject: For in the Year 1680, when a Writ of *Habeas Corpus* was served upon the Serjeant at Arms attending the House of Commons, in the behalf of Mr. *Sheridon*, who stood committed by Order of that House; after the House was made acquainted, That such a Writ was served upon their Officer, and had entered into very long Debates upon the Matter, they did not think fit to interpose, nor to pass any Censures upon the Persons concerned in procuring the Writ, or in appearing in behalf of the Prisoner; but left the Serjeant at Arms at Liberty to obey the Command of the *Habeas Corpus*; which he did accordingly, by carrying his Prisoner before the Judge, where the *Habeas Corpus* was returnable.

The House of Commons have in former Ages shewn a great and steady Concern for the Freedom of the Persons of their Fellow-Subjects: And upon their Petitions many excellent Laws have been made to protect Liberty against all unlawful Restraints by any Authority, even that of the Crown: But now it is insisted, That their own Imprisonments are out of the Reach of those Laws, and their Legality not to be examined.

In the third Year of the Reign of your Royal Grandfather, the House of Commons made a noble Stand for the *English* Liberties, and shewed, by undeniable Evidence, that the Causes of the Imprisonment must be expressed in all Cases, that so it might appear, upon the Return of the *Habeas Corpus*, whether they were sufficient in point of Law. *Vide Vol.* VII. *P.* 116, *&c.*

It could not then have been imagined, That the Successors of those Men would ever have pretended to an arbitrary and unlimited Power of depriving their Fellow-Subjects of their Liberties, or to vote it to be criminal so much as to enquire into the Validity of their Commitments.

There is another Occasion of Offence, which the House of Commons have taken against *John Paty* and *John Oviat*, two of these Prisoners, who thinking themselves wronged in their being remanded to *Newgate*, by the Opinion of the major Number of the Judges of the Court of Queen's-Bench, humbly petitioned your Majesty for a Writ of Error, in order to bring this Judgment before your Majesty in Parliament: And it is certain the Subject is never concluded by any Judgment, till he comes to the last Resort fixed by the Law in this Case.

The House of Commons being informed of these Petitions, came to a Resolution, which they laid before your Majesty, That the Commitments of that House were not examinable in any other Courts whatsoever; That no Writ of Error lay in this Case; and that as they had expressed their Duty to your Majesty in giving Dispatch to the Supplies, so they had an entire Confidence in your Majesty, That you would not give Leave for the bringing any Writ of Error.

The first Position in this Vote is very general, and the Consequences of it are plain; if the Commitments of the House of Commons are examinable in no other Place, then no Man in *England*, how innocent soever, is secure of his Liberty longer than the House of Commons pleases; and Men may be allowed at least to wish that it were not so, tho' they may have a very high Opinion of the Justice of that House.

It has been held as an undeniable Maxim, That whoever executes an illegal Command to the Prejudice of his Fellow-Subjects, must be answerable for it to the Party grieved.

Let it be supposed then, That an Action of false Imprisonment was brought against the Serjeant of the House of Commons, and that the Defendant justifies his taking the Plaintiff into Custody, by virtue of a Warrant of that House, and it appears upon the Face of the Warrant, That the Cause of the Commitment was no Crime in Law, and the Plaintiff demurs, what must the Judges do in such a Case? Will it be possible for them to avoid examining into the Commitment, and so give Judgment one way or other? Or can it be pretended, That a Writ of Error may not be brought upon such a Judgment? And is not the Court, before which the Writ of Error is brought, under a Necessity to do Justice thereupon, as the Law requires?

As to the second thing they have taken upon them to assert, That no Writ of Error lies in the Case; we affirm to your Majesty with great Assurance, That by our Constitution the House of Commons have no Right or Pretence to determine whether that be so or not. The Right of judging when a Writ of Error is properly brought, is by Law entrusted to that Court to which the Writ of Error is directed; and therefore we shall not at present say any thing to your Majesty in an extrajudicial way, and before the proper Time, as to that Point, Whether a Writ of Error brought upon a Judgment for remanding Prisoners upon a *Habeas Corpus*, can be maintained.

Which way that Question will be decided hereafter, when the Writs of Error are returned into the Parliament, is not at all material, in respect to the Petitions of the Prisoners which now lie before your Majesty: For unless your Majesty be pleased to grant the Writs of Error according to their Prayer, the Matter cannot come to the proper Decision in Parliament, and Justice will be manifestly obstructed.

Whether the Writs of Error ought to be granted, and what ought to be done upon the Writs of Error afterwards, are very different Things.

Things. The only Matter under your Majeſty's Conſideration is, Whether in Right and Juſtice the Petitioners are not entitled to have the Writs of Error granted?

We are ſure the Houſe of Commons, in the Year One Thouſand Six Hundred Eighty-nine, was of Opinion, That a Writ of Error, even in Caſes of Felony and Treaſon, is the Right of the Subject, and ought to be granted at his Deſire, and is not an Act of Grace and Favour, which may be denied or granted at Pleaſure: So that as far as the Opinion of the Houſe of Commons ought to have Weight in ſuch a Queſtion (whatever the preſent Opinion of that Houſe is); they then thought a Writ of Error was the Right of the Subject in capital Caſes (where only it had been at any Time doubted of).

But that it is a Writ of Right in all other Caſes, has been affirmed in the Law-Books, is verified by the conſtant Practice, and is the Opinion of all your preſent Judges, except Mr. Baron *Price*, and Mr. Baron *Smith*.

The Law, for the better Protection of Property and Liberty, has formed a Subordination of Courts, that Men may not be finally concluded in the firſt Inſtance: But this is a very vain Inſtitution, if they be left precarious in the Method of coming to the ſuperior Court.

All Suits are begun, as well as carried on, by the Authority of your Majeſty's Writs, and the Subject has a like legal Claim to all of them.

The Petition for a Writ of Error returnable in Parliament, is only Matter of Form, and Reſpect to your Majeſty (like the Petitions which the Speaker makes in the Name of the Commons, at the Beginning of every Parliament, for thoſe Privileges which they do not believe to depend upon the Anſwer to thoſe Petitions), and is no more to be refuſed than any other Writ throughout the Cauſe.

To affirm the contrary, is to allow an arbitrary Latitude to intercept Juſtice, and to make it depend upon private Advices, and extrajudicial Determinations, Whether any Cauſes at all ſhall be brought to Judgment before the High Court of Parliament?

Theſe Things being conſidered, how extremely ſurprizing is an Addreſs from ſuch a Body as the Houſe of Commons, That your Majeſty would not give Leave for ſuch a Writ.

And no leſs ſurprizing is what they inſinuate, as the Reaſon of their Confidence in your Majeſty, that you would hearken to ſuch an Addreſs, That they have given Diſpatch to the Supplies: They proceeded ſurely in the Matter of the Supplies with a nobler Aim, for the Safety of your Majeſty's Crown and Perſon, and for the delivering the Kingdom from the Oppreſſion of *French* Power, employed to ſet an unjuſt Pretender upon your Majeſty's Throne.

Theſe are good Reaſons for diſpoſing of the People's Money. Their Liberties, and all that is valuable to them, depend entirely upon the good Succeſs of the War, and they have uſed, in all Ages, to part freely with their Money for the Defence of their Liberties and Properties, and the removing of Grievances and Oppreſſions.

But this is the firſt Time a Houſe of Commons have made uſe of their having given the People's Money, as an Argument why the Prince ſhould deny Writs of Right to the Subject, obſtruct the Courſe of Juſtice, and deprive them of their Birth-rights.

On the Twenty-ſixth Day of *February*, the Houſe of Commons proceeded to carry on their Reſentments to greater Extremities, and voted, That the Gentlemen who pleaded as Counſel for the Five Priſoners, upon the Returns of the Writs of *Habeas Corpus*, and the Agents and Sollicitors who aſſiſted them, were guilty of a Breach of Privilege, and ordered them to be taken into Cuſtody; which Order has been executed.

This ſeems to be ſo great an Exceſs, that it is hard to find Words proper for expreſſing it. When *Cromwell* committed Mr. *Maynard* to the *Tower*, for aſſiſting one *Coney* as his Counſel, upon a *Habeas Corpus*, a celebrated Author expreſſes the Deteſtation due to ſuch a Fact, in theſe Words: "It was the higheſt Act of Tyranny that ever was ſeen in *Eng-*
"*land:* It was ſhutting up the Law itſelf cloſe Priſoner, that no Man
"might have Relief from, or Acceſs to it."

But as ſtrange and unjuſtifiable as this appears, we beg Leave to take Notice of another Thing yet more irregular (if it be poſſible): While the Matter was depending before your Majeſty upon the Petitions for Writs of Error; after the Houſe of Commons had made an Addreſs to your Majeſty, That you would not give Leave for the bringing Writs of Error; after your Majeſty had, by your gracious Anſwer, ſignified to them, "That
"this Matter relating to the Courſe of judicial Proceedings, was of the
"higheſt Importance, and therefore your Majeſty thought it neceſſary to
"weigh and conſider very carefully, what was proper for you to do;"
and after they had voted to take this very Anſwer of your Majeſty's into Conſideration: The Day following, they ordered the Five Priſoners to be removed from *Newgate*, and taken into the Cuſtody of the Serjeant at Arms attending the Houſe of Commons; and this Order was executed at Midnight, with ſuch Circumſtances of Severity and Terror, as has been ſeldom exerciſed towards the greateſt Offenders.

Your Majeſty is the only proper Judge how highly diſreſpectful this Action is to your Royal Perſon and Authority.

But it concerns us to ſay, That ſuch a Proceeding tends directly to the depriving the Petitioners of that Juſtice, which they were endeavouring to obtain by Means of the Writs of Error.

While your Majeſty was deliberating how to put an End to a Matter, which they only had made difficult by an unreaſonable Addreſs, the Houſe of Commons rightly apprehended, That Juſtice would prevail with your Majeſty over all other Conſiderations, and therefore (as far as poſſible to diſappoint the Priſoners of the Fruit they expected from theſe Writs of Error, when granted) they transferred them, in the mean Time, to another Priſon.

This Practice of removing Priſoners from one Cuſtody to another, has been ever complained of as manifeſt Oppreſſion, and moſt evidently deſtructive of the Liberty of the Subject: It is a Miſchief provided againſt in expreſs Words, by the Act made in the Reign of your Royal Uncle, King *Charles* the Second, *For better ſecuring the Liberty of the Subject*; That if any Perſon, being a Subject of this Realm, ſhall be committed to any Priſon, or in Cuſtody of any Officer whatſoever, for any criminal, or ſuppoſed criminal Matter, That the Perſon ſhall not be removed from the ſaid Priſon or Cuſtody, into the Cuſtody of any other Officer (unleſs it be by *Habeas Corpus*, or ſome other legal Writ); and this upon the great Penalties mentioned in that Act. The Penalties in the Act were new, but the Law of *England* was the ſame before the making it. The ſhifting of Men from one Priſon to any other, while they are uſing Means in a Courſe of Law to recover their Liberty, is inexcuſable Cruelty, and againſt the plain Rules of Natural Juſtice; for by ſuch Artifices, Impriſonments, however unlawful, might be made perpetual, and the Subject, as he was at the Point of being diſcharged from one Priſon, might be, without End, removed to another.

May it pleaſe your Majeſty, your dutiful Subjects, the Lords Spiritual and Temporal, were ſo ſolicitous to avoid any Thing which might give a Pretence to interrupt the neceſſary and early Proviſion for the War, in order to improve the wonderful Succeſſes God had given to your Arms: That though they were ſenſible the Impriſonment of theſe Men, in the Manner, and upon the Pretences above-mentioned, was a manifeſt Attempt to elude the Judicature of Parliament, and of pernicious Example to the Liberty and Property of the Subject, yet they forbore to take Notice of it, 'till they were in a Manner enforced by Petitions from the Priſoners, preſented the Twenty-fourth of *February* laſt, and by the unjuſtifiable Proceedings of the Houſe of Commons the ſame Day, which we have already mentioned to your Majeſty.

But then the Lords found it abſolutely neceſſary to enter into a Conſideration of the whole Matter, as it appeared to them; and upon the Twenty-ſeventh of *February* they came to the following Reſolutions:

Reſolved, That neither Houſe of Parliament have Power, by any Vote or Declaration, to create to themſelves new Privileges not warranted by the known Law and Cuſtom of Parliament.

Reſolved, That every Freeman of *England*, who apprehends himſelf to be injured, has a Right to ſeek Redreſs by Action at Law, and that the commencing and proſecuting an Action at the Common Law, againſt any Perſon who is not entitled to Privilege of Parliament, is no Breach of the Privilege of Parliament.

Reſolved, That the Houſe of Commons, in committing to the Priſon of *Newgate*, *John Paty*, *John Oviat*, *John Paton*, *Henry Baſſe*, and *Daniel Horne*, for commencing and proſecuting Actions at the Common Law againſt the late Conſtables of *Aylesbury*, for not allowing their Votes in the Election of Members to ſerve in Parliament, upon pretence, that their ſo doing *was contrary to a Declaration, a Contempt of the Juriſdiction, and a Breach of the Privilege of that Houſe*, have aſſumed to themſelves alone a legiſlative Authority, by pretending to attribute the Force of a Law to their Declaration, have claimed a Juriſdiction not warranted by the Conſtitution, and have aſſumed a new Privilege, to which they can ſhew no Title by the Law and Cuſtom of Parliament, and have thereby, as far as in them lies, ſubjected the Rights of *Engliſhmen*, and the Freedom of their Perſons, to the arbitrary Votes of the Houſe of Commons.

Reſolved, That every *Engliſhman*, who is impriſoned by any Authority whatſoever, has an undoubted Right, by his Agents or Friends, to apply for, and obtain a Writ of *Habeas Corpus*, in order to procure his Liberty by due Courſe of Law.

Reſolved, That for the Houſe of Commons to cenſure or puniſh any Perſon for aſſiſting a Priſoner to procure a Writ of *Habeas Corpus*, or by Vote, or otherwiſe, to deter Men from ſoliciting, proſecuting, or pleading upon ſuch Writ of *Habeas Corpus*, in behalf of ſuch Priſoner, is an Attempt of dangerous Conſequence, a Breach of the many good Statutes provided for the Liberty of the Subject, and of pernicious Example, by denying the neceſſary Aſſiſtance to the Priſoner upon a Commitment of the Houſe of Commons, which has ever been allowed upon all Commitments, by any Authority whatſoever.

Reſolved, That a Writ of Error is not a Writ of Grace, but of Right, and ought not to be denied to the Subject, when duly applied for, (tho' at the Requeſt of either Houſe of Parliament), the Denial thereof being an Obſtruction of Juſtice, contrary to *Magna Charta*.

Theſe Reſolutions were delivered to the Commons at a Conference, the Twenty-eighth of *February*, and they took Time to conſider of them till the Seventh of *March*; upon which Day, at their Deſire, a ſecond Conference was had; and though it was too apparent, by what was delivered by the Commons at that Conference (which conſiſted of injurious Invectives againſt the Houſe of Lords, and tedious Recitals of Precedents, in no ſort applicable to the preſent Subject of Debate), that their Deſign was either to provoke the Lords to ſuch a Degree, as might neceſſitate them to break off all Correſpondence, or by engaging them in new Matters, to draw Things to ſuch a Length, as might prevent the bringing theſe Debates to any Iſſue during the Seſſion: Yet the Lords immediately deſired a free Conference, which was afterwards had with the Commons.

We are ſo deſirous that your Majeſty ſhould be made fully acquainted with all the Paſſages relating to this Diſpute between the Two Houſes, that we humbly beg Leave to annex to this our Repreſentation, what paſſed at the firſt and ſecond Conferences; and alſo (as far as we have been capable of recollecting in ſo ſhort a Time) the Subſtance of what was ſaid at the free Conference, and in our Debates, in maintenance of the Reſolutions of the Houſe of Lords.

But we take it to be a Duty neceſſarily incumbent on us, to obſerve to your Majeſty the Manner in which we have been treated by the Houſe of Commons at theſe Conferences; ſo that from thence your Majeſty, according to your great Wiſdom, may judge to what ſuch Proceedings do naturally tend. They told us, That the Judicature of the Houſe of Lords was unaccountable in its Foundation, and inconſiſtent with the Conſtitution: If they mean it is ſo antient, that no Account can be given of its Foundation, it is true; but there is Reaſon to believe it began with the Monarchy, and we are ſure it has continued without Interruption, unleſs during that unhappy Interval, when a pretended Houſe of Commons deſtroyed the Church and the Monarchy, as well as the Houſe of Lords: As many Ages as the Conſtitution of the *Engliſh* Government has laſted, this Judicature has conſiſted with it, and formed a noble and neceſſary Part of it; and therefore theſe Gentlemen will hardly be believed againſt ſo long an Experience, That it is inconſiſtent with the Conſtitution.

They alſo charged the Lords in direct Terms, with uſurping the Hearing Appeals, with making Advances upon the Conſtitution, with contriving

to bring Liberty and Property into the bottomleſs and inſatiable Gulph of the Lords Judicature, and with direct Reproaches, as to the Manner in which that Judicature has been exerciſed, and in the moſt contemptuous Way told us they forbore to mention the Inſtances, becauſe they hoped we would reform.

We deſire no other Judge but your Majeſty, how ſuch a Treatment of us becomes theſe Gentlemen; and we dare appeal to all your Subjects, for Witneſſes of the irreproachable Manner of adminiſtering Juſtice in the Houſe of Lords.

We hope the great Diſpleaſure the Houſe of Commons has conceived againſt us may prove of ſome real Service, and of uſeful Caution to your Majeſty, for it has drawn them directly to own (what was too viſible before), that they were aiming at more Power, and a larger Share of the Adminiſtration than is truſted with them by the Nature of our Government. They directly complained, That by the Conſtitution the Judicature, in the laſt Reſort, was not placed in the ſame Hands with the Legiſlature; though they cannot ſhew it to be ſo in any Country where the Government is not arbitrary, and the Prince's Will the Law. They have been long endeavouring to break in upon the Lords Share in the Legiſlature, of which we could mention too many Inſtances to your Majeſty. From an ancient Claim, That Aids to the Crown are to begin in the Houſe of Commons, and that the Lords could not alter the Sums, they have of late Years pretended (but without any Reaſon, and againſt the known Uſage of Parliaments), that we could make no Alterations in any Parts of a Money-Bill, though it have no Relation to the Money: And upon that Foo, when they have had a Mind to get any thing paſſed into a Law, of the tReaſonableneſs of which they have deſpaired to convince the Lords, they have tacked it to a Money-Bill, in order to put the Crown and the Lords under that unhappy Neceſſity, either to agree to a Law they might think prejudicial to the Publick, or to loſe the Money, which perhaps, at that Time, was abſolutely neceſſary to the ſaving the Kingdom.

By this Method they aſſume to themſelves the whole Legiſlative Authority, taking, in effect, the Negative Voice from the Crown, and depriving the Lords of the Right of deliberating upon what is for the Good of the Kingdom: For this Reaſon the Lords had, in a very ſolemn Manner, reſolved never to ſuffer ſuch Impoſitions for the future, let the Importance of the Bill be never ſo great. This Reſolution was well known, and yet in this preſent Seſſion (as appears by the printed Votes of the Twenty-eighth of *November* laſt) a great Number of the Gentlemen of the Houſe of Commons, to the manifeſt Danger of diſappointing the Supplies of the Year, which muſt have been the Ruin of the whole Confederacy, and delivering up of *Europe* into the Hands of *France*, made an Attempt to tack to the Land-Tax a Bill which had been rejected in two precedent Seſſions of Parliament.

Thus the Houſe of Commons have formerly ſet on Foot ſeveral Attempts againſt that Share in the Legiſlature which is placed in the Lords: But this is the firſt Time they have publiſhed their Deſire to be let into the Judicature of Parliament.

Whatever they would inſinuate upon this Occaſion, we deſire not to meddle with the Choice of the Commons Repreſentatives; we willingly leave that Matter where it is: And in what Manner it is exerciſed there, how impartially and how ſteadily, is ſo well known by Experience to moſt Parts of the Kingdom, and ſo univerſally underſtood, that the People will be extremely deſirous their Eſtates and Properties ſhould be ſubject to ſuch Determinations.

It is not ſtrange the free Conference ended without Succeſs, when the Commons came to it with ſuch a Temper as appears by the Votes of the Eighth of *March*, made after they themſelves had conſented to the free Conference: If thoſe Votes had been publiſhed ſoon enough, it would have fully convinced the Lords how vain a Thing it was to confer with them further upon the Matters in Debate at the former Conferences: for not content with what they had done before, upon Information that their Serjeant had been ſerved with two Writs of *Habeas Corpus*, returnable before the Lord-Keeper, in Behalf of Mr. *Mountague* and Mr. *Denton*, two of the Gentlemen who had been of Counſel with the five Priſoners, they came to a Reſolution, That no Commoner, committed by them for Breach of Privilege, or Contempt of the Houſe, ought to be, by *Habeas Corpus*, made to appear before any other Judicature, and required their Serjeant to make no Return, or yield any Obedience to thoſe Writs; and that for ſuch Refuſal he had the Protection of the Houſe of Commons.

It has been always held the undoubted Prerogative of the Crown to have an Account of the Reaſon why any Subject is deprived of Liberty, and it has ever been allowed, That by the known Common Law it is the Right of every Subject under Reſtraint, upon Demand, to have his Writ of *Habeas Corpus*, and thereupon to be brought before ſome proper Court, where it may be examined, whether he be detained for a lawful Cauſe: And the Statutes made in the Reign of your Royal Grandfather, and your Royal Uncle, have enacted, That in all Caſes Writs of *Habeas Corpus* be granted and obeyed by the reſpective Officers upon great Penalties.

But theſe Votes import a direct Repeal of thoſe Laws, as to all Perſons committed by the Houſe of Commons.

It is no longer worth diſputing, Whether a Perſon committed by them, though for a Fact which appears to be both lawful and neceſſary, may be delivered by any Court; for by this new Law he ſhall never be brought thither, and the Serjeant is not only warranted, but commanded openly to contemn your Majeſty's Royal Writs of *Habeas Corpus*, brought upon the Act of the One-and-thirtieth of King *Charles* the Second, which is an Invaſion of your Prerogative, never before heard of in *England*.

Your Majeſty does not claim an Authority to protect any of your Officers for diſobeying a known Law. The *Habeas Corpus* Act, in Times of imminent and viſible Danger, was in the late Reign ſuſpended by Acts of Parliament for ſome ſhort Time, and yet (ſo ſacred was that Law held) that thoſe Acts paſſed with great Reluctancy, and one of the Arguments that prevailed moſt for agreeing to that Temporary Suſpenſion was, That it would be an unanſwerable Evidence to all future Times, that this Act could never be ſuſpended afterwards by any leſs Authority than that of the whole Legiſlature: But we live to ſee a Houſe of Commons take upon them to ſuſpend this Law by a Vote.

They Ordered, That the Lord-Keeper of your Great Seal ſhould be acquainted with their Reſolutions, to the End the Writs of *Habeas Corpus* may be ſuperſeded, as contrary to Law and the Privileges of their Houſe. They are contrary to no Law, but that of theſe Votes, which ſurely are none of the Laws the Lord-Keeper was ſworn to obſerve. But yet he is to act at his Peril. They have ordered this Law to be publiſhed to him by their Clerk.

The Lord-Keeper is a Commoner, and if he diſobeys, 'tis a Breach of Privilege; and if they ſhould carry it ſo far, as to order him into Cuſtody, he may ſeek, but is not to have, Relief from any *Habeas Corpus*.

We humbly beg Pardon of your Majeſty for this long and melancholy Repreſentation, which we could not avoid, without being guilty of Treachery to your Majeſty, and to our native Country. The five Perſons immediately concerned are but poor Men; but we well know your Majeſty's Juſtice and Compaſſion extends itſelf to the meaneſt of your Subjects.

The Matters in Diſpute are of the higheſt Conſequence: Your Majeſty's Prerogative, the Reverence due to Laws, and the Liberties and Properties of all the People of *England* are concerned and at Stake, if theſe Encroachments prevail.

We do not pretend to ſollicit your Majeſty to put a Stop to theſe Innovations, your own Wiſdom will ſuggeſt the moſt proper Methods: We have endeavoured to do our Duty, in laying the whole Matter before you.

We humbly beg Leave ſo far to reſume what has been ſaid, as to preſent your Majeſty a ſhort View of the unhappy Condition of ſuch of your Subjects as have Right of giving Votes for chooſing Members to ſerve in Parliament, which has been hitherto thought a great and valuable Privilege; but by the late Proceedings of the Houſe of Commons is likely to be made only a dangerous Snare to them, in caſe they who may be hereafter choſen to ſerve in Parliament ſhall think fit to purſue the Methods of this preſent Houſe of Commons.

If they refrain from making Uſe of their Right in giving their Votes, they are wanting in their Duty to their Country, by not doing their Parts towards the chooſing ſuch Repreſentatives as will uſe their Truſt for the Good of the Kingdom, and not for the Oppreſſion of their Fellow-Subjects.

If the Officer who has the Right of taking the Suffrages refuſe to admit them to give their Votes, they muſt either ſit down by it, and ſubmit to be wrongfully and maliciouſly deprived of their Rights; or if they bring their Actions at Law, in order to aſſert their Rights, and recover Damages for the Injury (as all other injured Men may do in like Caſes), they become liable to indefinite Impriſonment, by incurring the Diſpleaſure of thoſe who are elected.

If, being thus impriſoned, they ſeek their Liberty by *Habeas Corpus*, (the known Remedy of all other Subjects) they do not only tye their own Chains faſter, but bring all their Friends and Agents, their Sollicitors and Counſel into the ſame Misfortune with themſelves.

If they think themſelves to have received Injury by the Judgment upon the *Habeas Corpus*, and ſeek Relief by Writ of Error, (the known Refuge of thoſe who ſuffer by any wrong Judgment) all that aſſiſt them in that Matter are likewiſe to loſe their Liberties for it, and they themſelves will be removed to new Priſons, in order to avoid the Juſtice of the Law.

We humbly conclude with acquainting your Majeſty, That we have been informed, by the Petition of two of the Priſoners, that they have been long delayed (though they have made their Applications in due manner for Writs of Error): We are under a neceſſary Obligation, for the ſake of Juſtice, and aſſerting the Judicature of Parliament, to make this humble Addreſs to your Majeſty, That no Importunity of the Houſe of Commons, nor any other Conſideration whatſoever, may prevail with your Majeſty to ſuffer a Stop to be put to the known Courſe of Juſtice, but that you will be pleaſed to give effectual Orders for the immediate iſſuing of the Writs of Error.

Die Mercurii 14 *Martii*, 1704.

Her Majeſty's moſt Gracious ANSWER to the ADDRESS.

My Lords,

I ſhould have granted the Writ of Error deſired in this Addreſs; but finding an abſolute Neceſſity of putting an immediate End to this Seſſion, I am ſenſible there could have been no further Proceeding upon that Matter.

Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the humble Thanks of this Houſe be preſented to Her Majeſty, for Her moſt Gracious Anſwer, in which She has expreſſed ſo great a Regard to the Judgment of this Houſe, ſo much Compaſſion to the Petitioners, and ſuch Tenderneſs to the Rights of the Subject.

The ſame Day the Queen came to the Houſe, and put an End to the Seſſion, and the Lord-Keeper prorogued the Parliament to *Tueſday* the Firſt of *May*, which put an End to this Affair.

The Subſtance of what was offered by the Lords, at the Firſt and Second Conferences with the Commons, being already printed in the Proceedings of the Commons, *ante* Page 141, 142, 143, 144, 145, 146, is the Reaſon it is not here again inſerted.

Some of the Arguments that were made uſe of by the Lords in their Debates, and at the free Conference, to maintain their own Reſolutions, and anſwer the Objections of the Commons.

The Houſe of Commons made two Objections to the Manner in which the Lords proceeded at the firſt Conference: They ſaid, They had anticipated all Debates, by delivering poſitive Reſolutions, whereas this is the proper and ordinary Method of Proceedings between the two Houſes: When one Houſe has formed an Opinion, they communicate it to the other, to the End that if it be found reaſonable, it may be approved; or, if upon Examination it be diſliked, the Cauſes of the Diſagreement may be ſhewn, in order to convince the other Houſe of their Miſtake.

The Second Objection made to the Manner of the Lords Proceedings was, That the Reſolutions were grounded upon the Petitions of Criminals,

minals, who had fallen under the juſt Diſpleaſure of the Commons, and upon a printed Paper not regularly before the Houſe of Lords.

As to the firſt Part of the Objection, the Lords did (as juſt Judges always do) conſider the Matter of the Petitions, and not the Perſons of the Petitioners. And as to the ſecond Part, the Lords ſaid, The printed Paper mentioned by the Commons, was the Votes of the Houſe of Commons, of the 24th of *February*, ſigned by the Speaker. If the Commons had diſowned that Paper, there had been ſome Weight in this Objection, but if they think it regular to print and publiſh their Votes to the People, the Lords will always think it regular to take Notice, and make Uſe of thoſe Papers as they ſee Occaſion; and it ſeemed ſtrange for the Commons to object to the taking Notice of their Votes, when the only Colour they have hitherto pretended for their firſt Diſpleaſure at the five Priſoners, was, That they did not take Notice of ſome Votes of theirs, (which they call their Declaration) made during their laſt Seſſion. And the printing their Votes is the only Method they have yet taken, for the Promulgation of the new Laws they take upon them to make.

The Lords had no Occaſion to ſay any thing in Defence of their firſt Reſolution, becauſe the Commons did not think fit to avow in Words, That they had a Power to create new Privileges by their Votes, though they have manifeſtly attempted it in Practice, and particularly in the Caſe of the five Priſoners.

As to the unjuſt Reflections which the Commons made upon the Houſe of Lords, as if they had entertained original Cauſes, and were guilty of ſome encroachment in hearing Appeals from Courts of Equity;

The Lords avowed their Claim of a Juriſdiction, in hearing and determining Appeals from Courts of Equity, and could ſhew a continued Exerciſe of it, more ancient than the Determination of Elections in the Houſe of Commons, which yet the Lords do not go about to call in Queſtion: But they deny their having meddled with any original Cauſes, or that the Caſe particularly mentioned by the Commons was at all of that Nature.

The Lords did not underſtand what the Commons meant, by ſaying, The Lords had founded their ſecond Reſolution upon an extrajudicial Vote. The Judgment in the Caſe of *Aſhby* and *White* was given with great Deliberation, and founded upon undeniable Reaſons and unqueſtionable Authorities: And the Lords condeſcended ſo far in that Matter, as to direct the State of that Caſe, and the Grounds of that Judgment, to be drawn up and printed.

2. The ſecond Reſolution of the Lords conſiſts of two Aſſertions: *Firſt*, That every Man who apprehends himſelf to be injured, has a Right to ſeek Redreſs by Action at Law.

Secondly, That the proſecuting Actions at the Common Law, againſt any Perſon, not entitled to Privilege of Parliament, is no Breach of Privilege.

What the Commons objected to the Univerſality of the firſt Part of that Reſolution, as if it would deſtroy all Diſtinctions of Courts, and make a Confuſion of Juriſdictions, did ariſe only upon a plain Miſtake. The Lords mentioned Actions in general, without confining what they ſaid to Actions at Common Law, or affirming that Actions for all Sorts of Injuries may be brought in any one Court.

As to the Inſinuation, that the Lords had no other Aim than to extend their own Juriſdiction, by the ſeeming Regard and Tenderneſs they ſhew'd for the Rights and Liberties of the People; the Anſwer is, The only juſt Way of interpreting Men's Meaning, is, by obſerving what they act.

The Lords have acted with true Regard to Liberty and Property on this Occaſion, as well as in all others: They have voluntarily owned themſelves to be reſtrained, at the ſame time they deſire the Commons not to go about to create new Privileges: The Lords claimed nothing new; and the Commons cannot with Reaſon deſire them to give up what the Law and the Conſtitution have placed in them, the Judicature in the laſt Reſort.

The principal Thing inſiſted upon by the Houſe of Commons againſt this Reſolution, was, That there are privileged Caſes, as well as privileged Perſons; but they do not think fit to give any Inſtances of ſuch privileged Caſes as were anyways applicable to the Matters in Diſpute, that is, That were ſo entirely of the Connuſance of the Houſe of Commons, that the bringing an Action at Common Law in thoſe Caſes was a Contempt to the Houſe of Commons; and unleſs that could be done, this Diſtinction of privileged Caſes from privileged Perſons will have no Weight to juſtify the Commitment of the five *Ayleſbury* Men: If Men miſtake and bring Actions in *Weſtminſter-Hall*, for Matters cognizable in Parliament, ſo that they can have no Relief in the Courts below, it does not follow from thence, that they ought to be committed for Breach of Privilege on that Account.

The determining of Elections is admitted to be the Buſineſs of the Houſe of Commons, and yet it is certain, that the proſecuting Actions at Common Law, for falſe or double Returns, was never thought to be a Contempt to the Houſe of Commons, nor was any Body puniſhed or committed upon that Account, in the Caſes of Sir *Samuel Barnardiſton* and Mr. *Onſlow*.

The Freedom of Speech in Parliament, is the moſt neceſſary and the moſt acknowledged Privilege of the Houſe of Commons: And yet when an Information was brought in the *King's-Bench* againſt Sir *John Elliot*, and others, for Words ſpoken in the Houſe of Commons, and Judgment was given againſt them in that Court, the Commons did not think it ſufficient to condemn that Judgment by Votes of their own Houſe, but brought thoſe Votes up to the Lords, and deſired their Concurrence, which was given; and immediately thereupon a Writ of Error was brought in Parliament, and the Judgment regularly reverſed there: And it cannot be denied, that upon this Occaſion the moſt valuable Privilege of the Houſe of Commons was brought under the Judgment of the Lords, as well in their Judicial as in their Legiſlative Capacity.

The Caſe of *Richard Strode*, and the Act of Parliament which paſſed upon that Account, in the fourth Year of King *Henry* the Eighth, was

that which was principally inſiſted on by the Houſe of Commons, in the Caſe of Sir *John Elliot*, for juſtifying their undoubted Privilege of Freedom of Speech, and ſhewing the Injuſtice of what was done in that Caſe by the Court of *King's-Bench*.

The Caſe of *Strode* might be uſed by the Lords as another Inſtance, to ſhew, That this Diſtinction of privileged Caſes will not ſerve the Purpoſe of the Houſe of Commons, to juſtify the Commitments of the *Ayleſbury* Men. He was proſecuted in the Stannary Courts for Words ſpoken, and Bills offered in the Houſe of Commons, in order to be paſſed into Laws, and upon that Account was impriſoned and condemned to pay conſiderable Sums, and petitioned the Houſe of Commons to be relieved in that Matter. The Houſe of Commons did not then pretend to put a Stop to thoſe Suits, or to commit the Perſons concerned in them, but thought the only Remedy againſt thoſe Proſecutions, and others of like Sort, was to prepare a Bill, in order to be paſſed into a Law, for making void the Judgments againſt *Strode*; and took that Occaſion by the ſame Bill, to declare the Law in general, and to give an Action to all Perſons who ſhould be afterwards vexed or moleſted for the like Cauſes, in which they ſhould recover treble Damages and Coſts of Suit.

There is no Caſe that can more properly be called a privileged Caſe, with reſpect to the Houſe of Peers, than the determining of Peerage; and yet if that Matter comes to be incidently a Point, in any Caſe depending in the Courts in *Weſtminſter-Hall*, they muſt proceed to determine of it, as they think the Law to be; and the Lords have not gone about to hinder it, nor found Fault with them upon that Account.

The Courts in *Weſtminſter-Hall* muſt of Neceſſity judge of the Privileges of Parliament in many Caſes: When any Perſon prays a Writ of Privilege, (which was always the Way anciently when Men deſired the Benefit of Privilege, and it is often practiſed yet upon Occaſion) the Court where the Writ is prayed muſt judge, whether the Party has Right to Privilege or not?

Suppoſe the Serjeant of the Houſe of Commons ſhould kill, or be killed, in the Execution of a Warrant of that Houſe; upon an Indictment for Murder, the Court muſt neceſſarily judge of the Legality of the Warrant.

The Commons ſuppoſed Caſes of Affronts to the Perſon of the Speaker, or of reproachful Words ſpoken of the whole Houſe of Commons, are Inſtances of what they called privileged Caſes.

There is no Doubt, but either of theſe Caſes would be Contempts, and ſuch as might be puniſhed by the Houſe; but moſt certainly, theſe were alſo ſuch Offences as might be proſecuted in *Weſtminſter-Hall*: And if the Attorney-General ſhould bring Informations upon them, it could never be pretended, that he would be guilty of a Breach of Privilege of the Houſe of Commons.

It was urged, That in privileged Caſes, the Votes of the Houſe of Commons were like Prohibitions to the Eccleſiaſtical Courts, and that when Prohibitions were ſerved upon the Judges in the Admiralty, or Eccleſiaſtical Courts, it was a Contempt for them to proceed farther.

The Anſwer to this is, that Prohibitions to the Eccleſiaſtical and Admiralty Courts, were founded upon a particular Reaſon: The Proceedings in thoſe Courts are according to the Civil or Canon Law, and therefore it was neceſſary to preſerve the Conſtitution, and reſtrain thoſe Courts from making Invaſions upon the Common Law, that a Guard ſhould be ſet upon them, and a Power fixed to reſtrain them; and this Power is lodged in the Courts of *Weſtminſter-Hall*, who are truſted with the iſſuing Writs of Prohibition, to the Eccleſiaſtical and Admiralty Courts from Time to Time, upon Complaints made to them: And theſe Writs of Prohibition muſt be ſerved perſonally upon the Judge of the Admiralty, or the Eccleſiaſtical Judges, who will be liable to Attachments if they proceed after ſuch Service, until ſuch time as they have ſhewn the Nature of the Suit to the Courts from which the Prohibition iſſued; and if the Suit be properly of Eccleſiaſtical, or Admiralty Connuſance, the Court muſt grant a Conſultation, whereby they are at Liberty to proceed again. This is a known and ſettled Method of legal Proceedings, but the Votes of the Houſe of Commons were never yet reſembled to the Queen's Writs: No Court is bound to take Notice of them; on the contrary, the Judges are bound not to take Notice of them, but to act according to the known Law; nobody has Power to prohibit the Courts in *Weſtminſter-Hall*; the Judges there are ſworn to proceed to do Juſtice, notwithſtanding any Command under the Great Seal, or Privy Seal, or by any other Authority whatſoever: And the Subjects of *England* have no longer an Inheritance in the Common Law, if the Judges are to take Notice of the Votes of either Houſe of Parliament, and regulate their Judgments accordingly.

The Votes would not always be uniform in either Houſe, and it appears by the preſent Diſpute, that the Two Houſes might often differ in Matters of Importance, and the Judges would be under Difficulty which of the Houſes to obey: And if they yielded Obedience to both, they would be obliged to act very contradictorily.

3. What was ſaid againſt the Third Reſolution of the Lords, was, Firſt, That thereby the Lords took upon them to judge of the Commons Privileges: To this it was ſaid, That if the Houſe of Commons, under the Name of Privilege, would proceed to do Things inconſiſtent with the known Prerogatives of the Crown, with the known Privileges of the Lords, contrary to the Laws, or deſtructive to the Liberties of the People, the Lords were bound to tell them, Theſe were not their Privileges. If by ſaying, they only are Judges of their own Privileges, they would deprive the Crown and the Lords from taking Notice of manifeſt Innovations, and objecting to them as there was Occaſion, the Commons might take to themſelves the whole Government without Controul.

They were challenged to produce Precedents to warrant the Commitments of Men, only for proceeding in Suits at Law againſt thoſe who had done them Wrong, and had no Pretence of Privilege.

The Lords did not diſpute the Power of the Commons, in examining and determining the Elections of their own Members, nor of enquiring into

into all Matters relating to the Determination of that Question, particularly their examining into the Qualifications of Electors, and agreed that what they determined would be binding, as to the Right of the Member to sit in the House: But that Determination would not bind the Right of any Elector, for he was no Party to that Dispute of the Election, he was not heard for himself, nor was his Cause in Agitation before the House; and the Action brought by the Elector has no manner of Relation to the sitting of the Member, but is only for Recovery of Damages upon Account of the particular Injury done him by the Officer at the Election.

Suppose there was a Contest about two Persons, which was Mayor of a Town; the Court where that Cause was tried, in order to a Determination of the Right, must perhaps examine into the Rights of those who voted; but would it be pretended, that the Electors would be bound by the Opinion of the Court in that Case, and that they could not bring their Actions to recover Damages against the Officers who wilfully refused their Votes, however the Question was decided as to the Mayor? So that it was begging the Question to pretend, that because the House of Commons can try the Right of the Member to sit, therefore they only have a Power to decide finally the Rights of the several Electors.

There is no Weight in the Objection, That if these Suits were allowed, the Officers who are obliged to take the Poll would be exposed to Multiplicity of Actions.

The Law is so in all Cases of Elections of Officers: He who is to take the Poll, is bound to do his Duty at his Peril; if he acts with an honest Intention, though he should be guilty of a Mistake, he is in no Danger, for no Jury ought to find him guilty: But if an Officer wilfully and maliciously refuses to admit those who have Right to give their Votes, every one of them may sue him in any proper Court, as they see cause; and the more he wrongs, the more he ought to suffer. And which would be the greater Mischief, that the Officer who does Injustice should be subject to Actions, or that he should be at Liberty to reject as many rightful Votes as he thinks fit, without being liable to make any Reparation, and which is the Part a House of Commons ought to take? The Lords observed, That the natural Order of Things seemed to be quite inverted in this Dispute; the House of Commons were taking part against the Freedom of Law, against the Liberty of Men's Persons, and against the Right of their Electors.

As to the several Precedents insisted upon, they conclude nothing to the present Question, every one of them relating to the Right the House of Commons claims of determining the Elections or Returns of their Members, which they are in the quiet Possession of; and the general Expressions which are found in the Relation of these Precedents, can be understood only with respect to the Subject-Matter of those Cases.

The first Precedent, in the 28th of Queen *Elizabeth*, is of a double Return for the County of *Norfolk*. Though the Lords do not deny, That such Cases are proper to be determined by the House of Commons; yet this Precedent does not go far towards asserting their Right; for in that Case the second Writ was quashed by the Chancellor and Judges, before the Determination made by the House of Commons: And in the citing this Precedent they have not rightly stated the Words of the Queen's Message, or of the Resolutions of the House of Commons, as will appear by Sir *Simon D'Ewe*'s Journal; and they could not say they had any original Journal of that Time.

As to the second Precedent they cited, which is the Case of Sir *Francis Goodwin*, in the first Year of King *James* the First, which they made use of to prove their own power of determining Elections, and that they were not to give an Account of their Proceedings therein to the Lords: It appears by their own Journal, That they had not stated that Case fairly; and that in fact the Lords, at the Desire of the Commons themselves, were Mediators between them and the King in that Dispute; and that the Commons at last yielded the Point; and notwithstanding their Determination in favour of him, submitted, That a new Writ should issue for choosing a Member in the place of Sir *Francis Goodwin*. And though there be Mention in the Journal of a Letter wrote by Sir *Francis Goodwin*, desiring, That this Third Writ should issue; yet that could make no Difference in the Case; for it will not be pretended, That a Member could give up the Right of his Electors, and the Judgment of the House.

But all this makes nothing to the Justification of the Commitment of the *Aylesbury* Men.

The Precedent cited in 1672, relates only to the Right of issuing Writs for the Election of Members during the Continuance of the Parliament, the ordering of which was voted to be in the House of Commons only, and is not at all disputed at this time.

The Lords never disputed the Commons Power of committing for Breach of Privilege, as well Persons who are not of the House of Commons, as those who are: The Question is only, Whether a Matter that has no relation to the Sitting of any Member in Parliament, may be made a Breach of Privilege, by being called so in a Vote, or having that Name given to it in a Warrant of Commitment? That is, in other Words, Whether they have Power to create to themselves new Privileges by their Votes? For they will never be able to prove an Usage of committing Men for resorting to Law in such Cases, and it will be hard for them to convince those whom they represent, that this arbitrary oppressing poor Men, is or can be understood to be only an interposing to preserve the Rights and Liberties of the People of *England*.

4. The Commons did not deny the Lords fourth Resolution, otherwise than by saying, That the Application was to be made to the proper Place, and that where the Commitment is by the House of Commons, there is no Place to apply to for Liberty but that House.

The Lords thought this to be a Position very fatal to Liberty; for it places an arbitrary and absolute Power of Commitment in the House of Commons. Tyranny may be in many as well as in a single Person: The thirty Tyrants of *Athens* carry that Name with as heavy an Imputation as any single Person.

The Lords never said, That every Prisoner who brings his *Habeas Corpus* ought to be discharged, or that there are not Cases excepted out of the *Habeas Corpus* Act; what they insist upon is, That a Prisoner brought before a proper Court by *Habeas Corpus*, where it does appear that the Matter he stands committed for is no Crime in Law, ought to be discharged, by whatsoever Authority he was committed, or by whatsoever Name the Fact is called in that Commitment.

Several Precedents were mentioned by the Commons. *First*, The Case of one *Jones*; but it did not appear who he was, nor what his Case was, nor who would have taken him from the Commons; and therefore there can be no Pretence to draw any Inference from such a Precedent.

The Lords wondered to find any Weight laid on the Votes passed in the Year 1675. It is well known the Kingdom was at that time generally grown weary of that Parliament, which had been continued above thirteen Years; and there was a great Number in both Houses who watched for any Advantage to make their longer Continuance impracticable.

And there happening a Question at that time, Whether there might be a Proceeding in Appeals before the House of Lords, in Cases where Members of the House of Commons were Parties? This was so managed, that in about a Month's time Matters were grown to such a Height between the Two Houses, that all Correspondence was in a manner broken off between them; and they proceeded to make such Votes, and to do such Acts from Day to Day on either side, as they thought would most provoke.

The Commons cited some of these Votes which were passed in their House towards the Height of the Contest, and the Lords might as well have cited other Votes of the House of Lords, in contradiction to them, which were altogether as high, and are at least of as much Authority as those of the House of Commons: So that it is hard to imagine, what Use there can be of citing such Precedents, which did occasion two Prorogations, one after the other, and must always have as bad Consequences whenever they are followed.

The House of Commons took the same Exception to the Lords fifth Resolution, as they did to the third; That they therein made themselves Judges of the Privileges of the House of Commons: And the Lords contented themselves with giving them the same Answer.

What the House of Commons said in respect to their censuring and punishing the Counsel, who pleaded at the Queen's-Bench Bar, upon the Return of the *Habeas Corpus* in behalf of the Prisoners, seemed very remarkable, That it was because they were not so modest as to acquiesce in the Opinion of the Lord-Keeper and the Judges, that the Prisoners were not bailable by the *Habeas Corpus* Act; and they would not have taken Notice of them, but because they would not rest satisfied, but would bring on the Cause again, where the Privileges of the House of Commons were with great Licentiousness of Speech denied and insulted in publick Court, without any Hopes or Prospect of Relief of the Prisoners, but in order to vent new Doctrines against the Commons.

This seemed to be a kind of Excuse for the committing of the Counsel; but it does in no sort agree with the Votes relating to this Matter, which passed in general Terms, and may be cited for Precedents hereafter, for committing Counsel (with as good Reason as the Votes in 1675), when these secret Motives, which induced the House of Commons in this Case, will not appear.

The Vote of the 24th of *February*, ordered the Committee to examine what Persons had been concerned in pleading upon the Writ of *Habeas Corpus*, not what was said by Counsel in their Pleadings; and the Votes against the several Gentlemen of the 26th of *February*, are, That by pleading upon the Return of the *Habeas Corpus* on behalf of the Prisoners, they were guilty of breaking the Privileges of the House of Commons. It does not appear that there was any Complaint of what they said, at least there was no Vote against them for their Words; and indeed, if the Charge against them had been for Words supposed to be spoken, it would have been an unaccountable Hardship to have hurried them into Custody, without ever bringing them to the House to hear their Accusation, or to be heard as to what they had to say for themselves.

It does not appear that these Gentlemen were ever heard, or indeed were at all concerned, as to the Writs of *Habeas Corpus*, brought before the Lord-Keeper and the Judges in the Vacation-time: But suppose they had, and suppose they were satisfied, that as the *Habeas Corpus* Act was drawn, these Men might not be so clearly bailable by the Judges in Vacation-time, by virtue of these Writs, which were formed upon that Statute; and yet they might be of Opinion, That the Prisoners had a reasonable Prospect of obtaining Relief upon Writs or *Habeas Corpus* brought at Common Law.

If they thought so, it was not upon slight Grounds, as appeared by the Consequence; for the Lord Chief-Justice of the Court of Queen's-Bench, whose Learning and Judgment is well known, and as universally esteemed as his Integrity, was clearly of Opinion, That they were entitled to the Relief they prayed for their Clients.

The Commons may give what hard Words they please to these Gentlemen's appearing to plead in behalf of the Prisoners upon the Writs of *Habeas Corpus*; they may call it Inveteracy shewn to the Commons, and a conspiring to make a Difference between the Two Houses, and to disturb the Peace of the Kingdom: But after all that can be said, the Fact will only be, That four Gentlemen, Lawyers by Profession, retained in a Case of Liberty upon a *Habeas Corpus* brought by five poor Prisoners, did their Duty in their Profession; and for doing so, were themselves imprisoned by the House of Commons, and denied the Benefit of the *Habeas Corpus* Act: And this the House of Commons called, *Doing Right to their Body*.

No Lawyer has suffered for serving his Client even against the Crown: If the learned in that Profession may safely open the Laws when the Prerogatives of the Crown are in question, it will seem very hard they should be punished for doing it in a Case of Privilege. To deprive Men under Restraint of the Assistance of their Friends, exceeds the Severity of any Court but that of the *Inquisition*, the very Name of which ought to strike all *Englishmen* and Protestants with Horror.

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The laſt Reſolution of the Lords was not contradicted by the Houſe of Commons; and therefore the Lords took it for granted, that as it was no longer conteſted, but that a Writ of Error is a Writ of Right, and not of Grace; conſequently, that the Commons did no longer inſiſt upon that Part of their Addreſs, That the Queen would not give Leave for a Writ of Error.

As to what was ſaid by the Commons, That it was not material whether Writs of Error were of Grace or not, becauſe they did not lie in the Caſe of the Petitioners: The Lords ſaid, That whether the Writs of Error could be maintained or not in point of Law, was not of the Connuſance of the Houſe of Commons, nor the Matter in Diſpute between the Two Houſes.

LII. *The Proceedings in the* Houſe of Peers *and* Houſe of Commons, *on the Caſe of* Charles Bathurst, *Eſq. (mentioned in the foregoing Proceedings) in* January, 1703.

Jovis 20 *die Januarii*, 1703.

A PETITION of *Charles Bathurſt*, Eſq. was preſented to the Houſe of Commons, and read, touching an Order made by the Houſe of Peers, the Twelfth of *February*, 1702, with relation to an Order made by the Court of *Exchequer*, the Fifteenth of *July*, *Decimo Tertio Regni Regis Gulielmi Tertii*, concerning an Inquiſition and Survey of the Boundaries of the Honour of *Richmond*, and Lordſhip of *Middleham*, and of many other Honours, Manors, and Lordſhips, bounding thereupon; and praying the Conſideration of the Houſe thereof, and ſuch Relief on the Subject-Matter of the ſaid Petition, as ſhall be thought fit.

Ordered, That ſome Members be appointed to ſearch the Journals of the Houſe of Peers, as to their Proceedings touching the Matter aforeſaid, and alſo the Offices of the Court of *Exchequer*, touching the Proceedings there, in relation to the ſaid Inquiſition, and report the ſame to the Houſe.

And ſeveral Members were appointed accordingly.

The CASE *of* Charles Bathurst, *Eſq. Petitioner. To the Honourable the Knights, Citizens, and Burgeſſes, in Parliament aſſembled, in order to his Relief againſt certain Proceedings in the Houſe of Peers, at the Inſtance of the Right Hon.* Thomas *Lord* Wharton, *Appellant, from an Order of the Court of* Exchequer, *bearing Date the* 15*th Day of* July, 1701, *againſt* Robert Squire, *Eſq. Reſpondent.*

July 15, 1701.

THE Court of *Exchequer* made an Order *ex officio* for the Preſervation of a Record of that Court.

Nov. 9, 1702. The Lord *Wharton*, finding that the ſaid Record was made uſe of as Evidence againſt him in a Trial at the *Queen's-Bench Bar*, of an Iſſue directed out of *Chancery*, wherein the ſaid Lord *Wharton* was Plaintiff, and the ſaid Petitioner Mr. *Bathurſt*, the ſaid Mr. *Squire*, and others, were Defendants, concerning ſome Lead-Mines, did, on the 19th of *December*, 1702, petition the Houſe of Lords (by way of Appeal) from the ſaid Order of the Court of *Exchequer*, and prayed to have that Order diſcharged, and the Record taken off the File.

In which Petition the Lord *Wharton* complained, That the ſaid Record was impoſed on the Court (by contrivance between the ſaid Mr. *Squire* and Mr. *Thomſon*, a ſworn Clerk in the Court of *Exchequer*), and therefore prayed, they the ſaid Mr. *Squire* and Mr. *Thomſon* might anſwer the ſaid Petition (which he called an Appeal); and accordingly they were ordered to anſwer the ſame.

Jan. 7, 1702. Mr. *Squire* and Mr. *Thomſon* petitioned the Houſe of Lords, ſetting forth, That no Suit was ever depending in the Court of *Exchequer* between the Lord *Wharton*, and the ſaid Mr. *Squire* and Mr. *Thomſon*; and that therefore the Lord *Wharton*'s ſaid Petition was not an Appeal, but an original Complaint againſt them for a Crime of a high Nature, for which they ought to be left to be tried by the uſual Courſe of the Laws of the Land; and prayed their Lordſhips to diſmiſs the Lord *Wharton*'s Petition, and to diſcharge their Order, by which they the ſaid Mr. *Squire* and Mr. *Thomſon* were obliged to anſwer the ſame.

Jan. 21, 1702. The Lord *Wharton* put in his Anſwer to their Petition, inſiſting on his Appeal as regular, and alledging that there was a Suit in *Chancery*, wherein the ſaid Mr. *Squire* was a Defendant (among others) concerning the Lead-Mines in Queſtion, and that the Order made in this Caſe (tho' in the Court of *Exchequer*) affected the Suit in *Chancery*; and he then obtained an Order to hear one Counſel on each Side the very next Day.

Jan. 22, 1702. Counſel were heard, and their Lordſhips were pleaſed (on Debate) to diſmiſs the Petition of the ſaid Mr. *Squire* and Mr. *Thomſon*, and to order them to anſwer the Lord *Wharton*'s Petition (or Appeal) on *Monday* then next following. Againſt which Proceedings ſeveral of the Lords entered their Diſſent (or Proteſt), and gave Reaſons for their ſo doing in the Words following; *viz.*

Firſt, "We conceive that by this we aſſume a Juriſdiction in an "original Cauſe for theſe Reaſons:

1*ſt*, "Becauſe there has been no Suit between the Parties in the *Ex*-"*chequer*; and conſequently this Petition cannot be called an Appeal "from that Court.

2*dly*, "Altho' there was a Suit in the Court of *Chancery*, yet one of the "Perſons required to anſwer was not a Party in that Suit; and "therefore as to him (at leaſt) it muſt be an original Cauſe.

3*dly*, "Tho' all had been Parties in the *Chancery*, yet it never was "heard that an Appeal lay from one Court that had no Suit depend-"ing in it, becauſe there was a Suit depending in another Court.

Secondly, "Becauſe no Court can take any Cognizance of a Cauſe in "which that Court cannot make an Order; but in this Caſe the "Houſe of Lords cannot make an Order (becauſe very many are "concerned in this Record who are not before this Houſe) therefore "this Houſe cannot take any Cognizance of it."

Jan. 25, 1702. The Lord *Wharton* acquainted the Houſe, That he was willing to leave out *Thomſon*, and did only expect *Squire* ſhould anſwer his Petition; and thereupon he obtained an Order to that Purpoſe.

Feb. 2, 1702. Mr. *Squire* put in his Anſwer, ſtill inſiſting, as he had done in his ſaid Petition, That it was an Original Complaint againſt him, and could not be called an Appeal, there being no Suit depending in the Court of *Exchequer* between the Lord *Wharton* and him, and that the Record *, (which the Lord *Wharton* would have ſuppreſſed) not only greatly concerned Her Majeſty, but the Inheritances of ſeveral Thouſands of Perſons, who are equally concerned (if not more than he) in the Preſervation thereof, and that it was more immediately incumbent on the Barons of the Court of *Exchequer* to juſtify their own Order; and therefore prayed their Lordſhips would not proceed further againſt him, 'till all Parties concerned might be duly heard.

Feb. 8, 1702. The City of *London*, who are Grantees from the Crown of the whole Honour of *Richmond*, and Lordſhip of *Middleham*, finding themſelves intereſted in the Preſervation of the ſaid Record, petitioned the Lords to be heard by their Counſel againſt the Petition of the Lord *Wharton*, and their Lordſhips accordingly order'd Counſel to be heard for the City, on the Twelfth of *February*, being the ſame Day that the Counſel for the ſaid Mr. *Squire* were to be heard.

Feb. 12, 1702. Their Lordſhips heard Counſel for the Lord *Wharton* and Mr. *Squire*, (but refuſed to hear Counſel for the City, notwithſtanding their ſaid Order) and thereupon were pleaſed to order a Trial at Bar in the Court of *Common Pleas*, the next *Eaſter*-Term, by a Jury of *Middleſex*, wherein this was to be the feigned Iſſue, *viz.*

"Whether the Skins of Parchment, directed by Order of the Court "of *Exchequer*, of the Fifteenth of *July*, 1701, to be filed, are "the perfect, unaltered, exact, and entire Commiſſion and Re-"turn firſt filed in the Court of *Exchequer*, in the Sixteenth Year "of King *James* the Firſt:"

And Ordered, That in the ſaid Action the ſaid *Robert Squire* ſhould be Plaintiff, and take the Proof of the ſaid Iſſue upon himſelf, and the ſaid Lord *Wharton*, Defendant, and that the Skins of Parchment, or any Copy thereof, ſhould not be given in Evidence in any Court whatſoever until the ſaid Trial was over; and that the ſaid Skins of Parchment (being upon the File by Virtue of the ſaid Order of the Fifteenth of *July*) ſhould not be allowed as any Evidence on the ſaid Trial for the Plaintiff; and that, after the ſaid Trial, the Verdict given therein ſhould be certify'd and returned by the Court of *Common Pleas* into the Houſe of Peers.

Mr. *Squire* did not decline the Trial of the Iſſue above directed, as being conſcious of any ill Practices by himſelf, or any others, or for that he was not able to produce ſufficient Evidence to prove that the ſaid Record is perfect, unaltered, exact and entire, as firſt filed in the Court of *Exchequer*, in the Sixteenth Year of King *James* the Firſt, *(tho' Mr.* Squire *could not but think that it was a great Hardſhip to make him Plaintiff in the ſaid Action, to put the Validity of the whole Record upon the ſaid Iſſue, and to oblige him to take the Proof thereof upon himſelf, and all this without his Conſent, or the Conſent of others, who are more immediately concerned in the Preſervation of the ſaid Record)* there being better Proofs, in order to find the ſaid Iſſue truly in the Affirmative, to be given for the ſaid Record, than for any one of the moſt Authentick Records in any of the Courts of *Weſtminſter* (as is verily believed). For,

I. In a Decree of the Court of *Exchequer* inrolled, made in the Nineteenth Year of King *James* the Firſt, the ſaid Record is recited and referred to, as then on Record in the Court of *Exchequer*.

II. The ſaid Record is entered and inrolled *Verbatim*, in the Book of Inrollments of Surveys, *&c.* kept in a publick Office at *Weſtminſter*, belonging to the Auditor for *Yorkſhire*, and the ſaid Entry is near as old as the ſaid Record.

III. The ſaid Record, and particularly the Boundaries of the Honour of *Richmond*, and Lordſhip of *Middleham*, (about which only the Diſputes are between the Lord *Wharton*, and the ſaid Mr. *Bathurſt*, and the other Defendants) are fairly entered, and remain on Record, in an old Book, kept amongſt the Records of the City of *London*, and the ſame Entry there appears to be made in the Year 1628.

IV. Divers ancient Office Copies (and other Copies) of the ſaid Record, and particularly of the Boundaries of the ſaid Honour of *Richmond*, and Lordſhip of *Middleham*, have been taken, and the ſame were examined with the ſaid Record, when on its proper File in the Court of *Exche-*

* *Note.*—The Record is a Survey and Boundary of the Honour of *Richmond*, and Lordſhip of *Middleham*, which together are larger than the County of *Middleſex*, and more than One Hundred Miles in Circumference; whereas the Boundaries conteſted by the Lord *Wharton* and Mr. *Bathurſt*, are not above Two or Three Miles thereof.

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quer, and certified to be true Copies. All which ſaid Entries and Copies do exactly agree with the ſaid Record, now on its proper File. And moreover, there are many other Inſtances, Evidences, and Proofs of the Truth, Validity, and Entireneſs of the ſaid Record.

But Mr. *Squire* being apprehenſive that the Houſe of Peers, in making the ſaid Order of the Twelfth of *February*, 1702, had aſſumed a Juriſdiction in an Original Cauſe, could not (as he believed) comply with that Order, without doing Injury to the Rights and Privileges of the Commons of *England*; and, for that Reaſon, did not think fit to try the Iſſue as directed.

Nov. 9, 1702. *Note*, That at the firſt Trial at the *Queen's-Bench* Bar of the Iſſue directed out of *Chancery*, (when the ſaid Record was given in Evidence) the Verdict, upon full Evidence, was given and found for the ſaid Mr. *Bathurſt*, Mr. *Squire*, and the other Defendants; yet the Court of *Chancery* (as is uſual where a Right of Inheritance is to be bound) afterwards directed a ſecond Trial to the ſame End as the former, which came on at the *Queen's Bench* Bar in *Michaelmas* Term laſt, *Nov.* 23, 1703.

That at the laſt-mentioned Trial, the Counſel for the Plaintiff, the Lord *Wharton*, inſiſted that the ſaid Mr. *Bathurſt*, and the other Defendants, could not give in Evidence the ſaid Inquiſition and Survey, (tho' on Record in the Court of *Exchequer*) nor any Copy thereof, by reaſon the ſaid Mr. *Squire* had not tried the Iſſue directed by the Houſe of Peers, the ſaid Twelfth of *February*, 1702.

That by reaſon of the Premiſſes the ſaid Mr. *Bathurſt*, and the other Defendants, were deprived of that ſo neceſſary a Part of their Evidence, for the Support of their Title to the Matters in queſtion at the ſaid laſt-mention'd Trial, and ſo (and for that Reaſon alone) loſt their Cauſe, which otherwiſe they could not have done; for that the ſaid Record (back'd with the concurring Teſtimonies of ſo many ancient and credible Witneſſes, produced on the ſaid Defendant's Behalf) muſt neceſſarily have convinced the Jury (as ſome of them have ſince own'd and declared), that the Boundaries of the Manours of *Helaugh* in *Swaledale*, and of *Arklegarthdale*, are as the ſaid Record mentions them to be, and conſequently, the Iſſue and Verdict muſt have been found for the ſaid Mr. *Bathurſt*, and the other Defendants.

Sabbati 22 *die Januarii*, 1703.

Mr. *Ward* reported, That the Members appointed to ſearch the Journals of the Houſe of Peers, and Offices of the Court of *Exchequer*, as to their Proceedings touching the Matters mentioned in the Petition of *Charles Bathurſt*, Eſq. preſented to the Houſe on *Thurſday* laſt, had ſearched the Journals and Offices accordingly, and he read in his Place what they found therein, and afterwards deliver'd the ſame in at the Table, where the ſame was read.

Ordered, That the Conſideration of the ſaid Report be referr'd to the Committee of the whole Houſe, to whom the Conſideration of the Report made Yeſterday, relating to the Caſe of *Aſhby* and *White*, is referr'd.

Ordered, That the ſame Members do ſearch the Offices of the Court of *Chancery*, for the Bills and Anſwers, and Order on Hearing, made in the ſaid Court, between the Lord *Wharton*, and the ſaid Mr. *Bathurſt* and others, and report the ſame to this Houſe.

Martis 25 *die Januarii*, 1703.

Mr. *Benſon* reported, That the Members appointed to ſearch the Offices of the Court of *Chancery* for the Bills and Anſwers, and Order on Hearing, made in the ſaid Court, between the Lord *Wharton* and Mr. *Bathurſt*, had ſearch'd the ſame accordingly, and had Copies of the Bills and Anſwers, and Order on Hearing, which he preſented to the Houſe, and the Titles thereof were read: And alſo touching their Lordſhips Proceedings in the Matter mention'd in the Petition of Mr. *Bathurſt*, in which Caſe it was alledged, their Lordſhips had taken upon them an original Juriſdiction, in controuling an Order made by the Court of *Exchequer*, for the filing of a Record that had been ſeveral Years in Mr. *Grange*'s Chamber in the *Temple*.

Ordered, That the Conſideration of the ſaid Copies be referr'd to the Committee of the whole Houſe, to whom the Report, with relation to the Petition of the ſaid Mr. *Bathurſt*, is referr'd.

Jovis 27 *die Januarii*, 1703.

The Order of the Day being read, for the Houſe to reſolve itſelf into a Committee of the whole Houſe, to conſider further of the Report of the Journal of the Houſe of Lords, and alſo of the Petition of *Charles Bathurſt*, Eſq. referr'd to the Committee:

Ordered,

That the Serjeant do go with his Mace in *Weſtminſter-Hall*, and Courts there, and Court of Requeſts, and Places adjacent, and ſummons the Members there to attend the Service of the Houſe.

And he went accordingly, and being returned,

The Houſe (according to Order) reſolved itſelf into the ſaid Committee of the whole Houſe, and after ſome Time ſpent therein, *Mr. Speaker* reſumed the Chair, and Mr. *Freeman* reported from the ſaid Committee, That they had come to ſome Reſolutions, which they had directed him to report, when the Houſe will pleaſe to receive the ſame.

Ordered,

That the Report be made To-morrow Morning.

Veneris 28 *die Januarii*, 1703.

Mr. *Freeman* (according to Order) reported from the Committee of the whole Houſe, to whom it was referred to conſider of the Report of the Journal of the Houſe of Lords, and the Petition of *Charles Bathurſt*, Eſq. the Reſolutions which they had directed him to report to the Houſe, which he read in his Place, and afterwards deliver'd in at the Table, where the ſame were read, and (with ſome Amendments to the firſt of them) agreed unto by the Houſe, and are as follow:

Reſolved,

That the Houſe of Lords taking Cognizance of, and proceeding upon the Petition of *Thomas* Lord *Wharton*, complaining of an Order of the Court of *Exchequer*, bearing Date the fifteenth Day of *July*, One thouſand ſeven hundred and one, for filing the Record of a Survey of the Honour of *Richmond*, and Lordſhip of *Middleham*, in the County of *York*, is without Precedent, and unwarrantable, and tends to the ſubjecting the Rights and Properties of all the Commons of *England* to an illegal and arbitrary Power.

Reſolved,

That it is the undoubted Right of all the Subjects of *England*, to make ſuch Uſe of the ſaid Record as they might by Law have done before the ſaid Proceedings of the Houſe of Lords.

After this, The Houſe of Lords took into Conſideration the Proceedings of the Houſe of Commons, and made the following Reſolution:

Die Lunæ 27 *Martii*, 1704.

It is Reſolved and Declared by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Houſe of Commons taking upon them by their Votes to condemn a Judgment of the Houſe of Lords, given in a Cauſe depending before this Houſe in the laſt Seſſion of Parliament, upon the Petition of *Thomas* Lord *Wharton*, and to declare what the Law is, in Contradiction to the Proceedings of the Houſe of Lords, is without Precedent, unwarrantable, and an Uſurpation of a Judicature, to which they have no Sort of a Pretence *.

Matth. Johnſon,
Cler' Parliamentor'.

LIII. *The Trial of* Nathaniel Denew, *Gent.* John Merriam, *Gent. and* Richard Britton, *Gent. at the* Queen's-Bench *Bar, for an Aſſault and Conſpiracy, with an Intent to Wound and Beat*, &c. William Colepeper, *Eſq. before the Lord Chief-Juſtice* Holt, Feb. 14, 1703-4.

[*Publiſhed (from the Trial taken in Short-Hand) by Mr.* Colepeper.]

The QUEEN Plaintiff,
AGAINST
DENEW, and others, Defendants.

Tried at the Queen's-Bench, *before the Lord Chief-Juſtice* Holt, Feb. 14, 1703-4.

AFTER Proclamation made for Silence, the Jury was Sworn, whoſe Names are as follow:

Richard Bealing,	*Richard Daviſon*,
Thomas Dodd,	*Simon Smith*,
John Mills,	*Edward Bennet*,
Robert Rogers,	*Andrew Cook*,
John Norton,	*John Henly*,
John Wiſeman,	*John Cleave*.

Proclamation was made for all concerned in the Trial to appear.

Then the Record was read as follows:

Midd' ſſ. THE *Jurors for our Sovereign Lady the Queen preſent, That* Nathaniel Denew, *late of the Pariſh of* St. Clement Danes, *in the County aforeſaid, Gent.* John Merriam, *late of that Pariſh, in the ſaid County, Gent. and* Richard Britton, *late of the ſame Pariſh, in the ſame County, Gent. being Fighters, Swordſmen, and Diſturbers of the Peace, and ſkilful and verſed in fighting Duels, on the* 21*ſt Day of* Auguſt, *in the ſecond Year of the Reign of our Sovereign Lady* Anne, *by the Grace of God, of* England, Scotland, France, *and* Ireland, *Queen, Defender of the Faith*, &c. *did, in the Pariſh of* Clement Danes, *in the ſaid County of* Midd', *unlawfully, clandeſtinely, deviliſhly, wickedly, and maliciouſly, under Pretence of Diſcord, Strife, and Contention between Sir* George Rook, *Knt.* † *One of Her Majeſty's Moſt Honourable Privy-Council, and* William Colepeper, *Eſq. then and before mov'd, had, and being, conſult, machinate, propoſe, and intend, and did among themſelves, and others to the Jurors unknown, confederate and conſpire, and each of them did machinate, propoſe, and intend to beat, wound, and evilly treat the ſaid* William Colepeper, *and him the ſaid* William Colepeper, *either by Duel or Aſſaſſination, feloniouſly and maliciouſly to kill and murder: And that afterwards, that is to ſay, on the* 21*ſt of* Auguſt, *in the Year aforeſaid, about the Hour of Ten in the Forenoon of the ſame Day, in the Pariſh and County aforeſaid, the ſaid* William Colepeper *being in the Peace of God and the Queen, came the ſaid* Nathaniel Denew, *with Force and Arms, and lying in wait of his Malice fore-thought, and Aſſault premeditated, then and there offered himſelf to fight a mortal Duel, in Behalf (as he ſaid) of the ſaid Sir* George Rook, *againſt the ſaid* William Colepeper; *and with threatening, ſpiteful, and opprobious Words*

* *Die Lunæ* 27 *Martii*, 1704. It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Reſolution and Declaration made this Day, with reſpect to the Votes of the Houſe of Commons, in relation to the Judgment of this Houſe, given upon the Petition of *Thomas* Lord *Wharton*, the laſt Seſſion of Parliament, ſhall be forthwith Printed and Publiſhed. Matth. Johnſon, *Cler' Parliamentor'*.

† When Mr. *Colepeper* ſtood for Knight of the Shire for *Kent*, Sir *George Rook* vigorouſly oppos'd him, and wrote Letters to ſome of the Freeholders of that County, importing, "That he hoped they would not give their Votes for a Man who had carried up a Petition (Mr. *Colepeper* being one of the *Kentiſh* Petitioners) that had been "deem'd ſcandalous, inſolent, and ſeditious, by an *Engliſh Parliament*." This was the firſt Occaſion of the Quarrel between them.

then and there daringly, wickedly, maliciously and vehemently urged, provoked, and stirred up the said William Colepeper *to fight with him the said mortal Duel; and that afterwards, that is to say, on the 22d Day of the said Month of* August, *in the Year aforesaid, about Nine a-Clock in the Morning, in the Parish aforesaid, the said* William Colepeper *being in the Peace of God and the Queen, then came the said* Richard Britton, *with Force and Arms, Malice fore-thought, and Assault premeditated; and then and there offered himself to fight a mortal Duel, in Behalf (as he said) of the said Sir* George Rook; *and with threatening Words, daringly, wickedly, maliciously, and vehemently urged, provoked, and stirred up the said* William Colepeper *to fight with him the said mortal Duel; and that the said* Nathaniel Denew, *and* John Merriam, *on the same 22d of* August, *in the Year, and in the Parish aforesaid, with Force and Arms, with Malice fore-thought, by lying in Wait, and premeditated Murder, assaulted him the said* William Colepeper; *and with drawn Swords sharply, cruelly, and with all their Strength tryed, and long contended, to wound, kill, and murder him: And unless the said* William *had strenuously and with Courage defended himself, and had been seasonably rescued by several of Her Majesty's Subjects, at that Time interposing between them, they, the said* Nathaniel Denew *and* John Merriam, *had then and there feloniously, voluntarily, and maliciously killed and murdered him; and that the said* Nathaniel Denew, John Merriam, *and* Robert Britton, *committed other Enormities to the said* William Colepeper, *to the grievous Damage of the said* William Colepeper, *the Danger of Bloodshed and Murder, to the great Scandal and Infamy of the said Sir* George Rook, *being One of Her Majesty's most Honourable Privy Council aforesaid, in Contempt of the Queen and her Laws, to the evil Example of all others in the like Case offending, and against the Peace of the said Queen, Her Crown and Dignity.*

After which, Mr. Serjeant *Darnell* began, and opened for the Queen.

Serj. *Darnell.* If your Lordship please, I am Counsel in this Cause for the Queen, and, my Lord, it is an Indictment that is brought against the Defendants; it is for a very great Insolence and Assault, in setting upon Mr. *Colepeper*, and designing to take away his Life; and truly, my Lord, it is a very extravagant Trespass as I have met with. The Gentlemen pretend to shelter their ill Designs against Mr. *Colepeper* under the Name of a very great and worthy Person, Sir *George Rook*; they pretended they came upon his Account to quarrel with Mr. *Colepeper*, truly for him they would quarrel with Mr. *Colepeper*. My Lord, Mr. *Colepeper* told them, that if Sir *George Rook* had taken any thing ill of him, he knew he was a Gentleman of Quality and Worth, and would acquaint him with it himself, or he would speak with Sir *George Rook* about it. The Gentleman that came to him was a kind of Master of Defence, and upon all Occasions hath his Sword ready at any Man's Service; one would wonder at his coming so roughly upon a groundless Mistake, for he had nothing against Mr. *Colepeper*; and, my Lord, the Gentleman with some surly Language left him; and my Client was jealous truly what might be the Event of this kind of Proceeding. Tho' Mr. *Colepeper* is known to be a Man that will not be afraid of any Man of Honour whatsoever; and that they have had sufficient Experience of upon Occasion. My Lord, upon that, Mr. *Colepeper* thought it proper however to enquire a little into this Matter, and went to wait upon Sir *George Rook*, and know if there was any thing real in it, that he had Occasion to take ill from him; but he could not imagine any thing, but the groundless Pretence these Gentlemen had. One of them told him at *Windsor*, Mr. *Colepeper* asked how Sir *George Rook* did, or where he was? A Question which any Man might ask without any Offence certainly in the World; this they did pretend to alledge against him; the Manner of the Question, that was the Thing was taken Notice of, as if a Man should say, How does such a Man do? And he could not speak this without an Affront, it is very extraordinary indeed! But Mr. *Colepeper* had great Reason to believe there was a Design upon him; and he found, that there were two or three Persons that are Gentlemen, that do make use of their Swords upon Occasion; and they are now Defendants in this Cause; and, my Lord, Mr. *Colepeper* finding himself beset very plainly, and having Notice by several Letters from his Relations, that there were several People, that were this Gentleman's Acquaintance, that were hunting after him, he began then to look about him, as every prudent Man would do; every prudent Man, though never so brave, will take Care not to be murdered; and, my Lord, upon this he did, I think, walking along the Street, meet with this same Mr. *Denew*, who began to be rough with him: Mr. *Denew*, says Mr. *Colepeper*, you know you are a Man that is known to be skilful at your Weapons, and if you are resolved to fight, pray lay aside your Cane; says he, and if you will run me through, as you talk, pray lay aside your Cane. No, says he, and takes his Cane, and was going to strike Mr. *Colepeper*; with that Mr. *Colepeper* thought it time to draw, and Mr. *Denew* he drew, and they had about half a Score Passes at one another; and this Gentleman of Defence had not at least more Skill, or more Courage than Mr. *Colepeper*, but he thought fit to throw down his Sword, and rub off in the Crowd; and Mr. *Merriam* was with him; and for an honourable Retreat, says he, Mr. *Colepeper* must have Care how he manages his Tongue, how he talks; this he would pretend to the Mob as a Reason of his setting upon Mr. *Colepeper*. My Lord, we shall shew to your Lordship, at several times these Persons have design'd and endeavour'd to set upon Mr. *Colepeper*, they had pretended to challenge him upon their own Account; at first it was upon the Account of Sir *George Rook*, as they pretended; then, my Lord, they came to him again: I have spoken, says Mr. *Colepeper*, to Sir *George Rook*, and you have nothing to do to meddle in this Matter. How! says *Denew*, the Affront is to me: To you! says Mr. *Colepeper*, How's that? Why you talked, says he, too loud for me. This Man of Courage, if a Man does not talk to please him, he is angry at the Talk, and will fight him, and *Merriam* was upon the same Terms; and if Sir *George Rook* was satisfied, yet however they must have Satisfaction; and there were twenty more of them that were Friends and Dependents upon Sir *George Rook*, that had that Esteem of him, that they would make him know himself; and he must fight them all, or be insulted. My Lord, this has been the Behaviour of these Men, and my Client is forced to make this Matter publick, and hath made a Prosecution against them; and no Man as stout as *Hercules* will suffer himself to be murdered, or set upon by twenty Men. My Lord, we will make out this to be our Case, and doubt not but the Gentlemen of the Jury will do us Right.

Mr. Colepeper *sworn.*

Coun. Queen. Pray, Sir, will you give my Lord and the Jury an Account of this whole Matter, and of these Gentlemen the Defendants, Mr. *Denew*, *Merriam*, and *Britton?*

Mr. *Colepeper.* My Lord, upon the 11th of *July* last, I think it was, I was attending at *Windsor*, having Business before the Queen and her Council, there was a Gentleman, who I understand is since gone to *America*, one Colonel *Seymour:* I having Business there, and there being an Express come from the Fleet, I inoffensively asked where Sir *George Rook* was, and how he did? He could not tell; but, says he, here was Sir *Jacob Banks* just now, he could give me a particular Account: No, I told him, I asked on a publick Account, and I was not desirous particularly to know; so away I went. About an Hour afterwards, coming back to the same Place again, Sir *Jacob Banks* comes behind me, and pulls me round about by the Sleeve.

L. C. Justice. When was this?

Mr. *Colep.* This was in the Beginning of *July*.

L. C. J. Who did so?

Mr. *Colep.* Sir *Jacob Banks*, my Lord.

Coun. Queen. Begin with Mr. *Denew*.

Mr. *Colep.* If you please, my Lord, to let me, I'll deal fairly with the Court and Jury, and rip the whole Matter up.

L. C. J. Go on, if you please, Sir; what said Sir *John Banks?*

Mr. *Colep.* Says he, I must speak with you. I dispatched my Business with the Door-keeper, and went to him, and asked his Business with me. Says he, What do you say of Sir *George Rook?* Said I to him again, Nothing at all. Says he, You have been talking of Sir *George Rook*'s being at the *Bath*, and drew his Finger cross my Nose; I drew my Finger cross his Nose, in the same manner, and he struck me with his Cane. I applied myself in a few Days after to the Duke of *Devonshire*, who is Lord Steward of the Queen's Household: He gave an Account of it to the Queen; and I was told the Queen had ordered a Prosecution against Sir *Jacob Banks* for this Offence*. After this, on the 21st Day of *August*, near *Temple-Bar*, Mr. *Denew* and Mr. *Merriam* came to me in the Toy-Shop by the *Temple*.

Coun. Queen. Consider about what Time of the Day was this?

Mr. *Colep.* About 9 or 10 o'Clock.

Coun. What Day?

Mr. *Colep.* The 21st of *August*, Mr. *Denew* comes close up to me, and whispers me; says he, I desire to speak with you. I was going with Mr. *Denew* into the *Inner-Temple Lane*; and as I went out of the Shop, Mr. *Merriam* gave me a wishful Look, and says nothing, but goes his way into the *Rainbow* Coffee-house. Says Mr. *Denew*, I have a Message for you from Sir *George Rook*. Pray, Sir, said I, what is it? Sir *George Rook*, says he, is informed that you take a Freedom with his Name, and demands of you a Gentleman-like Satisfaction. Pray, Sir, said I, who are you? for tho' he is my Countryman, and I had seen him, I did not recollect who he was. Says he, My Name is *Denew*. I then recollected his Person and Character. Said I, Mr. *Denew*, my Circumstances are very particular; I shall wait upon Sir *George Rook:* I have been advised to question him; but private Revenge is not much my Principle; and I think I have the Advantage of Sir *George Rook* in the Fighting Part. Says Mr. *Denew*, Sir *George* has Friends, and there will be a Way found out for that. I from thence immediately imagined (and by the several Letters my Mother sent to me out of the Country, of Mr. *Knatchbull*'s, Sir *George Rook*'s Friend, coming often, and sending to enquire after me) that I was beset. My Lord, I desired Mr. *Denew* to call at 11. Sir, Said I, if you please to come to me at 11 of the Clock to my Chamber in the *Temple*, I will then give you a farther Answer. At 11 o'Clock Mr. *Denew* came; it struck 11 just as he came up Stairs: He then told me, I had disappointed Sir *George Rook*, and gave me several Reflections, which I passed over, apprehending his Design. Mr. *Denew* insisted that I should go down presently to Sir *George Rook*; I said I would wait upon him at 5 o'Clock, and did not doubt but I should satisfy him, for I had not injured him: But Mr. *Denew* was not satisfied with that Answer, and would quarrel with me if I would not engage to go at 1 o'Clock: So I did; but it was on condition that Mr. *Denew* should not be there. Said I, Mr. *Denew*, my Business is with Sir *George Rook*, and my Friends are out of Town; my Business is with Sir *George Rook* only, and not with you: So he agreed not to be there; but afterwards at parting, said he unawares, pray don't disappoint us. Now Mr. *Denew* having before told me there would be a way found out for that, and that Sir *George Rook* had Friends, and I thinking on my Mother's Letters out of the Country, concluded that I should not have fair Play; for these Reasons, instead of going to Sir *George Rook*, I wrote a civil Letter to him, of which I have a Copy in my Pocket, the Substance of which was, That I never injured him at *Windsor*, and that I would wait upon him at 5 o'clock: And I ordered my Man, Be sure, said I, do you take Notice whether Mr. *Denew* be there, and what other Gentlemen are there; because, as I said before, I did apprehend myself to be beset, My Lord. My Man goes with this Letter, and brings me Word that he had seen Sir *George Rook*, that he had delivered the Letter, and that he had sent Word, That if I did not come to him by 5 o'Clock, he would immediately send after me: At the same Time my Man saw Mr. *Denew* there, and some others. My Lord, seeing I was used in this manner, I endeavoured to seek for Friends to go down, because I was loth to go naked to Sir *George Rook*'s. To this Purpose I went about,

* Sir *Jacob Banks* was indicted for this at the Quarter-Sessions in *Berkshire*. See *Modern Cases argued and adjudged in the Court of Queen's-Bench, in the 2d and 3d Years of Queen* Anne, Page 245, where the Case is at large reported.

to

to the *Smyrna* Coffee-Houſe in the *Poll-Mall*, and to *Tom*'s Coffee-Houſe in *Covent-Garden*. There my Siſter *Steed* ſent me Word by this very Servant, that Mr. *Denew* was come back to my Lodgings: I took that Occaſion to go to Sir *George Rook*'s Houſe; the Time appointed was five o'Clock, and it was but a little turned of that Time when I went. I aſked, Whether Sir *George Rook* was within? The Servant anſwered me, No; but in ſuch a manner that I thought he was within: Said I, Sir *George Rook* is within: Says he, He is either within, or hard by: Said I, Tell him that I am here. The Servant went immediately from me, and in my Eye he went to no Houſe; I kept my Eye upon him, I think he ſpoke to no Creature; but he returned, and ſaid, Sir *George Rook* was not at home. This farther convinced me, and I ordered my Man to look for him; ſaid I, Look in that Room for Sir *George Rook*; he did ſo, and he was not there; than I ordered him to look up ſtairs.

L. C. J. Where was this?

Mr. *Colep.* My Lord, in Sir *George Rook*'s Houſe. After I ſaw he was not to be found there, I took my Coach and went to St. *James*'s; I diſcharged my Coach, and went croſs the Park, and from thence, by Water, to my Lodgings; and when I came in, my Siſter told me, Mr. *Britton* had been to ſee for me.

L. C. J. Did you not ſee Sir *George Rook* at that time?

Mr. *Colep.* No, my Lord.

L. C. J. Did you ſee Mr. *Denew* there?

Mr. *Colep.* No, my Lord; for Mr. *Denew* was gone to my Lodgings the mean time, and I took that time to go to Sir *George Rook*'s: My Buſineſs was to miſs Mr. *Denew*, and to ſpeak with Sir *George Rook*.

L. C J. What Time of the Day?

Mr. *Colep.* At 5 o'Clock, my Lord, the Time appointed, or a little after. My Lord, my Siſter told me when I came home, that Mr. *Britton* had been there to enquire for me, and Mr. *Denew* too, and ordered her to ſend for him to a Coffee-Houſe; ſo accordingly ſhe ſent, and he was gone. About 10 o'Clock at Night in came Mr. *Denew* again: Sir, ſaid he, I deſire to ſpeak with you: Sir, ſaid I, I have no Buſineſs with you; I ſhall receive no more Meſſages from Sir *George Rook* by you, nor ſend any more Meſſages to Sir *George Rook* by you. I ſaid farther, I had been at Sir *George Rook*'s Houſe, and I believed he was denied; but, ſaid I, I will be there again to-morrow: But, ſays Mr. *Denew*, we will end it ourſelves below: I have a Friend, ſays he, below, and I ſee you have a Friend with you, and we will end it. My Lord, this was about 10 o'Clock at Night.

L. C. J. Who was with you?

Mr. *Colep.* My Siſter *Steed*, one Mr. *Cumin*, and Mrs. *Harlackenden*. Mr. *Denew*, ſaid I, my Buſineſs is not with you, but with Sir *George Rook*: Says he, That ſhall not ſerve your turn: Says I, I hear you: Sir, ſays he, By God, I will have you out: Said I, I hear you: By God, ſays he, I will have you, if you are to be had above Ground. He then went away that time. The next Day, being *Sunday*, I was dreſſed almoſt as ſoon as it was Light, and about 6 in the Morning I was at Sir *George Rook*'s Houſe. I ſtaid near an Hour; about 7 he came down to me: I went into his Cloſet with him: Sir *George Rook* took Notice of this Challenge he had ſent by Mr. *Denew*, and renewed it himſelf. Said I, Are you reſolved to fight with me, right or wrong? He ſaid he was ſatisfied in the Wrong that was done him, and ſeveral others had injured him by making Reflections on him; but he would ſee if he could find them out, *and deſtroy all his Enemies*. Sir, ſaid I, I have not injured you: the Terms are not equal; you fight with your Pardon in your Pocket, I fight with the Halter about my Neck: Therefore, ſaid I, Sir, if you preſs this unjuſt Quarrel, you are obliged to make the Terms of it equal. Said he, I am going to *Holland*, and I will accept of your Satisfaction upon the Coaſt of *Holland*: Said I, if you inſiſt upon it, I will wait upon you into *Holland*; you ſhall keep the Matter ſecret between us, and let me have no more Meſſages from other Gentlemen, who, in caſe of Accident, may be Witneſſes againſt me; but ſend a Servant or Porter to me, and I will immediately come to you, and the Matter ſhall be concerted betwixt ourſelves in private. I then went home; and after I had been at home about half an hour, Mr. *Britton* came in: There were with me in the Room my Siſter *Steed*, Mrs. *Harlackenden*, and Mr. *Bently*. Mr. *Britton* deſired the Company to withdraw, for he wanted to ſpeak with me; accordingly they withdrew: Says he, Mr. *Colepeper*, I come to you out of Friendſhip; you are a Gentleman of Quality, and Sir *George Rook* hath thought fit to proceed with you as ſuch, and hath ſent you a Challenge: Said he, I was with him Yeſterday, and there, ſays he, we conſulted together how to proceed with you; and, ſays he, here is an Affidavit of Colonel *Seymour*'s: I read the Affidavit; it is pretty long; but to the beſt of my Memory it amounts to this, That I aſked where Sir *George Rook* was, and how he did, *abruptly, and in an odd manner*. Now Mr. *Britton* having delivered me this Meſſage, ſays he, Mr. *Colepeper*, here is a Paper which Sir *George Rook* will be ſatisfied with if you will ſign it: He read the Paper to me, and ſhewed it to me to read: I ſhall know it again when I ſee it; it was to this purpoſe, That I had never ſpoke amiſs of Sir *George Rook* at Court, or at any Place whatſoever, or to Sir *Jacob Banks*, or any Perſon whatſoever; that if I had ſaid any thing that could be taken as a Reflection by him or his Friends, I was heartily to aſk his Pardon. Said I, This Paper is a moſt unworthy Thing, and I will loſe the laſt Drop of my Blood before I will ſign it. If you do not, ſaid *Britton* to me, there are twenty of us; the Quarrel is in its own Nature a publick Quarrel: Sir *George Rook* is the Flower of *Kent*; he gets Offices and Preferments for his Friends; and there are above twenty of us will ſtand and fall with him; and I will ſtand by him for one, and I have a Friend or two hard by; if you will not ſign this Paper, come out. Said I, Mr. *Britton*, you tell me this now, but have you ſeen Sir *George Rook* To-day? Says he, I know his Mind better than you. My Lord, he then tendered me the Paper again, and told me it was the laſt time that I ſhould have that Favour offered; and ſaid, If you will not ſign it, you will be inſulted. Said I, I will ſooner die than ſign it; I will defend myſelf. With that he goes out at the Door: Says my Siſter, Pray go to the Door with him: No, ſaid I, the Villain hath challenged me. I then went to Mr. *Bently*, and told him, in confidence of Secrecy, which he promiſed, that Sir *George Rook* and I had agreed to meet upon the Coaſt of *Holland*. Pray, Sir, ſaid I, go along with me in the Street, for they go in Cluſters, and I ſhall have no fair Play: Draw not your Sword, ſaid I, and obſerve that I draw not mine firſt; I'll be upon the Defenſive here, ſaid I: And when I came to St. *Clement*'s Church, Mr *Denew* overtook me, and came to me.

Coun. Queen. What Morning?

Mr. *Colep.* The ſame *Sunday* Morning, about two or three Hours after I had been with Sir *George Rook*: I had my Eyes about me, as I thought it concerned me to have, and I often turn'd about to ſee who was coming. I ſaw Mr. *Denew* running after me: Seeing him run, I thought it not worthy of a Man to run from him: I ſtood, he comes up to me; ſays he, Well over-taken: Said I to him again, Your Buſineſs, Sir? Says he, I come to demand Satisfaction of you: Said I, I have been with Sir *George Rook*, and have ſatisfy'd him: Well but, ſays he, you have not ſatisfy'd me, and you are a Scoundrel and a Rafcal; and if you will not draw, I'll cane you. I thought not fit to return his ill Language again; and in the next Place, I would give no Colour to the Quarrel, being upon their own Accounts. Said I, I ſee you are Two to One, becauſe Mr. *Merriam* was there. No, ſaid Mr. *Denew*, you are Three to Two; for I had this Mr. *Cumin* and Mr. *Bently*, my Friends, with me: No, ſaid I, I will engage no Man in my Quarrel, but I will go with you myſelf. So I went with him, and as we were going, ſaid I, Mr. *Denew*, What Quarrel have you with me? Says he, You ſpread out your Hands thus, and raiſed your Voice. Said I, Mr. *Britton* hath been with me, and told me of your Conſultation; but Sir *George Rook* will not thank you for this, for I have been with him. Says he, I know Sir *George Rook*'s Mind. Said I, I have been with him this Morning; Have you ſeen him ſince? I know his Mind better than you, ſaid he, and you muſt fight with me. So I went along with him. When I came to the Corner of *Little-Drury-Lane*, I obſerved him to have a great Cane in his Hand: Said I, you have a great Cane, which is a great Advantage, if you have ſkill to uſe it; you muſt lay down your Cane: Inſtead of laying it down, he up with it as faſt as he could to ſtrike me; with that I ſtepp'd back and drew my Sword, and he did the ſame; but he fumbled, having his Cane in his Hand, ſo that I believe my Sword was out rather ſooner than his: I walk'd back about the Length of this Court, and there I ſtood; Mr. *Denew* came to me. Tho' I know ſomething of Fencing, I had heard ſo much of Mr. *Denew*'s Skill, that I was not willing to venture my Skill againſt his: I held my Sword cloſe to my Body, with the Point up, and thruſt without parrying, and drew it back again to myſelf. This was the Way of my Defence; and we had, in this Manner, about ſeven or eight Paſſes at each other: At laſt, ſeeing the Advantage he had of me with his Cane, I threw firſt my Hat at him, which miſs'd him; afterwards I threw my Peruke, which hit him upon his Shoulder; I took that Opportunity, and made a home paſs at him: Says Mr. *Denew*, That is not fair, and dropt his Sword; that is not fair, ſaid he: Fair---! ſaid I; any thing to an Aſſaſſin; you are a Villain hired by ——— to aſſaſſinate me. This, my Lord, was what I ſaid.

Coun. Queen. Mr. *Colepeper*, you ſaid at the firſt Time, That Mr. *Denew* replied, that Sir *George Rook* had Friends, and there would be a Way found out for that: What was it?

Mr. *Colep.* That Sir *George Rook* had Friends, and there would be a Way found out for that.

Coun. Queen. For that: What did you think was the Meaning?

L. C. J. Who ſaid that?

Mr. *Colep.* Mr. *Denew* to me, my Lord, in the *Inner-Temple-Lane*.

L. C. J. What, at the Firſt Meeting?

Mr. *Colep.* Yes, my Lord.

Coun. Queen. But your Servant that you ſent, did he ſee him there?

Mr. *Colep.* Yes; ſo he ſaid.

Coun. Queen. That Day you was at Sir *George Rook*'s, was Mr. *Denew* there?

Mr. *Colep.* I did not ſee him there.

Coun. Queen. Who was by when you had the Scuffle at *Little-Drury-Lane*?---Mr. *Colep.* Mr. *Cumin*, and Mr. *Bently*.

Coun. Queen. Was Mr. *Merriam* there?

Mr. *Colep.* Yes; he came with Mr. *Denew*, and was ready to make one.

L. C. J. Did Mr. *Merriam* draw his Sword?

Mr. *Colep.* No, my Lord, he ſtood by.

Coun. Queen. What did Mr. *Merriam* ſay that Time in your hearing?

Mr. *Colep.* I did not hear him ſpeak any thing.

Coun. Queen. I aſk you this, Did he ſay at any Time, that he had taken Sir *George Rook*'s Quarrel upon himſelf?

Mr. *Colep.* Yes, *Saturday* Night.

Coun. Def. Don't lead, don't lead.

Mr. *Colep.* My Buſineſs, ſaid I, is with Sir *George Rook*. Mr. *Denew* ſaid, He had another below, and he would end it there; ſays he, By God, I'll have you out.

Coun. Queen. What is this *Denew?*

Mr. *Colep.* I don't know that he is a Gentleman, I believe he is not. He has, by Report, no very good Fortune, and is ſaid to have fought in other People's Quarrels pretty frequently.

Coun. Queen. Is he a Soldier, or a Fencing-Maſter, or a Gentleman? What is he?

Mr. *Colep.* He is one that hath great Skill in Fencing, and I thought him cull'd out for that Reaſon.

Coun. Queen. What ſaid Mr. *Britton*, at the Time he brought Colonel *Seymour*'s Affidavit? What, did he talk of a Conſultation?

Mr. *Colep.* He told me, he was with Sir *George Rook* the Day before, and that they were conſulting how they might proceed with me.

Coun. Queen. How often was Mr. *Merriam* with Mr. *Denew?*

Mr. *Colep.* I ſaw him when Mr. *Denew* firſt deliver'd the Challenge, and at the Time of the Aſſault; and I underſtood he was in a Coach at Ten o'Clock at Night, when Mr. *Denew* challenged me out.

Coun. Queen. Did Mr. *Britton* uſe any Words about ſaving your Life or Honour?

Mr. *Colep.* Yes; he ſaid, It was all I had to ſave my Life, to ſign that Paper.

L. C. J. Who ſaid ſo?

Mr. *Colep.* Mr. *Britton*, my Lord, *Sunday* Morning, about an Hour and a half after I had been with Sir *George Rook*.

Mr.

Coun. Queen. And when you refuſed it, what did he ſay then?

Mr. *Colep.* Says he, the Quarrel is publick in its Nature, Sir *George Rook* is the Flower of *Kent*, and there are above Twenty Friends depending upon him; and, ſays he, Come out, I will ſtand by him. I told him, it was unworthy of him to tender ſuch a Paper, and I would loſe the laſt Drop of my Blood before I would ſign it.

Coun. Queen. What did he ſay then?

Mr. *Colep.* Then, ſays he, you'll be inſulted.

L. C. J. Then you did not hear Mr. *Merriam* ſay any thing, or do any thing?

Mr. *Colep.* Yes, my Lord, I ſaw him make a Motion, when Mr. *Denew* ſaid, Here is Mr. *Merriam*, and I have another Friend hard by: And after the Scuffle was over, I met Mr. *Britton* hard by.

L. C. J. How far?——Mr. *Colep.* It was near *Temple-Bar*.

L. C. J. This Side, or the other?

Mr. *Colep.* Juſt this Side, coming through as it were. I was firſt overtaken by Mr. *Denew* near St. *Clement*'s Church.

L. C. J. What Time of the Day was this?

Mr. *Colep.* It was during the Time of Divine Service.

L. C. J. Where were you going?

Mr. *Colep.* My Lord, I am a Man, as other Men are; I thought myſelf moſt barbarouſly uſed, and ſince I had made this Agreement with Sir *George Rook*, to give him Satisfaction upon the Coaſt of *Holland*, I went to tell Mr. *Britton*, that if he would go over with Sir *George Rook*, I would ſpeak with him after I had ſpoke with Sir *George Rook*.

L. C. J. I aſk you where you were going then?

Mr. *Colep.* I was going from my Lodging to beyond St. *Clement*'s Church.

L. C. J. Upon what Occaſion?

Mr. *Colep.* My Lord, to ſpeak with Mr. *Britton*.

L. C. J. Did he lodge thereabouts?

Mr. *Colep.* Yes, my Lord, I think in *Boſwell-Court*. I was in ſo much Paſſion, that as I went, I felt not the Ground that I trod upon.

Coun. Queen. How ſoon after Mr. *Britton* was gone from you did you go out?——Mr. *Colep.* Immediately.

Coun. Queen. How ſoon after that did you ſee Mr. *Denew?*

Mr. *Colep.* Immediately he overtook me.

L. C. J. What need had you to go after Mr. *Britton?* You had ſeen him juſt before at your Chambers; you ſay you went to ſpeak with Mr. *Britton*; you ſay he was juſt before at your Lodgings; Why did you not tell him ſo then?

Mr. *Colep.* My Lord, my Paſſion began to riſe afterwards, upon the Reflection.

L. C. J. Had you not told him as much before?

Mr. *Colep.* Yes, my Lord; but I had not bid him prepare to go, and that I would take him after Sir *George Rook* in *Holland*.

L. C. J. Did you intend to tell him, that you would meet with him in *Holland*, and deal with him after Sir *George Rook?*—Mr. *Colep.* I did ſo.

L. C. J. Did you go after Mr. *Britton*, to attack him immediately? Or only to tell him, that after you had diſcharged yourſelf of your Engagement with Sir *George Rook*, you would engage with him?

Mr. *Colep.* Yes, my Lord: But always on the defenſive Part here.

Coun. Queen. How far from your Lodgings did Mr. *Denew* ſtand?

Mr. *Colep.* I lodge in *Cecil-Street*, and he overtook me about St. *Clement*'s Church; and he run. Mr. *Merriam* was with him at that Time, and he pointed at him as another; I apprehended Mr. *Merriam* to be one of them.

Coun. Queen. Was he there the firſt Day Mr. *Denew* came to you?

Mr. *Colep.* Yes, the firſt Day.

L. C. J. Did Mr. *Merriam* ſay any thing to you?

Mr. *Colep.* No, my Lord.

L. C. J. Did he hear what Mr. *Denew* ſaid to you?

Mr. *Colep.* Yes, my Lord, at the Time of the Aſſault.

L. C. J. But the firſt Time?

Mr. *Colep.* No, my Lord; he gave me a wiſhful Look at going into the Coffee-Houſe.

Coun. Queen. Did he lay his Hand upon his Sword, or any thing?

Mr. *Colep.* No; I believe not.

Coun. Def. That is not fair: Pray, Sir, be pleaſed to anſwer me a Queſtion or two. You ſay you was going to Mr. *Britton*'s, Was it not with a Deſign to challenge him? You ſay likewiſe, Your Paſſion was ſo high, you did not well conceive what you did, Did you not deſign to challenge him then?

Mr. *Colep.* No; neither to challenge, nor to quarrel with him inſtantly. But I told Sir *George Rook*, at parting, that I hoped he would change his Reſolution; but, ſaid I, if you perſiſt in it, I will wait upon you; and if he would perſiſt in the Reſolution, then I thought, that ſince Mr. *Britton* had uſed me in this Manner, he was fitter than another, that was an innocent Perſon.

Coun. Def. I think you ſay you had a Challenge from Sir *George Rook*; Was it in Writing, or by Word of Mouth?

Mr. *Colep.* By Word of Mouth, by Mr. *Denew*.

Coun. Def. You ſay, Mr. *Denew* overtook you by St. *Clement*'s; Do you apprehend that they came thither to meet with you?

Mr. *Colep.* I apprehended it wherever I went; I looked to be attacked in the Street, and ſo I told Mr. *Bently*, and deſired him to be with me, and take Notice, that I was upon the Defenſive, for there will be Swords drawn.

Coun. Def. You ſay you lodged in *Cecil-Street?* How could you think to meet them there? Did you think they would lie in wait?

Mr. *Colep.* Yes, and that they were waiting for me every where: When I aroſe in the Morning, and looked from my Lodgings. I ſaw ſome Perſons ſtand at the End of *Cecil-Street*, and bob, and run: Theſe I apprehended were Setters.

Coun. Def. Mr. *Colepeper*, the 21ſt, you ſay, was the firſt Time that you had any Diſcourſe with theſe People, Did you not ſend to Mr. *Denew* to to come to your Chamber?——Mr. *Colep.* No.

Coun. Def. At Eleven o'Clock.

Mr. *Colep.* No; ſaid I, if I ſhould out-ſtay my Hour, come at Eleven to my Chamber; and accordingly he came: My Reaſon was, I found he would make a Quarrel of it, if I diſappointed him but a Moment.

Coun. Def. Did you not ſend your Servant for him?

Mr. *Colep.* No, I ſent my Servant to the Coffee-Houſe, to ſee whether he was there.

Coun. Def. Did you not ſend for Mr. *Britton?*

Mr. *Colep.* No, I believe my Siſter did; ſhe thought him to be a Peace-maker, as he pretended himſelf to be.

Coun. Def. Give me Leave to aſk you one Queſtion: You ſay you were in great Paſſion, you thought yourſelf likely to be attack'd, Why then did you go out that Morning to Mr. *Britton*'s?

Mr. *Colep.* I have given you an Account of that already; I was provoked more than human Nature could bear.

L. C. J. He ſays, that what Mr. *Britton* had offered to him; made him to be further enraged, and went after him to acquaint him, that after he had diſengaged Sir *George Rook*, he would engage with him.

Mr. *Colep.* I don't know what I ſhould have ſaid to him; but thoſe, my Lord, were my preſent Thoughts.

Coun. Def. When Mr. *Denew* met with you, Were there not ſome hard Words that paſſed between you Two?

Mr. *Colep.* No, not any on my Part.

Coun. Def. Did you not give him ſome abuſive Language?

Mr. *Colep.* I did not, Sir; he called me Scoundrel and Raſcal, but I made no Return to him.

Coun. Def. But when he came to your Chamber at Ten o'Clock at Night, did you not tell him that you had been at Sir *George Rook*'s, and that he had uſed you like a Scoundrel; and that you believed him to be like him?

Mr. *Colep.* No, nothing of that: I have not ſeen Sir *George Rook*, I ſaid, and I believe he denied himſelf.

Coun. Def. Pray, Mr. *Colepeper*, the firſt Time Mr. *Denew*, you ſaid, ſaid nothing that was uncivil to you: Then he only fairly delivered to you a Meſſage.

Mr. *Colep.* And that Sir *George Rook* had Friends; and, that there would be a Way found out for that.

Coun. Def. What ſort of Reputation had Mr. *Britton?* Is he uſed to fight Duels? Is he famous for Duelling?

Mr. *Colep.* I know nothing of him: He is my Country-man, but I live a great Way from him.

Coun. Def. What Age is he of?

Mr. *Colep.* He is an able, ſtrong Man of his Age: He is in Court, you may ſee him.

Coun. Def. I aſk you, on your Oath, upon the Time you admit he, Mr. *Denew*, was civil, did he give any Reflections at firſt?

Mr. *Colep.* He did not call me ſcoundrel and Raſcal the firſt Time.

Coun. Def. You admit, the firſt Time he was civil?

Mr. *Colep.* No, Sir, he gave me ſeveral Reflections, but did not call me Scoundrel and Raſcal at the firſt.

L. C. J. Who did not?

Mr. *Colep.* Mr. *Denew* did not, at the firſt Time.

L. C. J. Did he ever call you ſo?

Mr. *Colep.* Yes, my Lord, at the Time of the Aſſault.

Coun. Def. Which call you the ſecond Time?

Mr. *Colep.* When he came to my Chamber at Eleven o'Clock in the Morning, that was the ſecond Time, then he would quarrel with me, becauſe, as he ſaid, I diſappointed Sir *George Rook*.

L. C. J. When was this?

Mr. *Colep.* *Saturday* Morning, at 11 o'Clock.

Coun Def. You ſay he went away ſatisfied?

Mr. *Colep.* I do not ſay he was ſatisfied.

Coun. Def. I aſk you upon your Oath, the third Time, Whether there was not angry Words on both Sides? You gave him reproachful Language, and aſked him what he had to do there at Ten o'Clock at Night? I think this was——

Mr. *Colep.* There was none on my Side: He ſaid that we might end it: I ſaid I had been with Sir *George Rook*, and I was of Opinion that he was at home, and deny'd himſelf.

L. C. J. That was *Sunday* Morning.

Mr. *Colep.* No, my Lord, I had been there *Saturday* Afternoon, and they ſaid he was not at home then: This Gentleman aſked, Whether I did not, at 10 o'Clock at Night, give Mr. *Denew* hard Words? I ſaid, No.

Coun. Def. Did he quarrel with you on his own Account?

Mr. *Colep.* No, he declared it was upon Sir *George Rook*'s Account; and ſaid he would take the Quarrel upon himſelf.

Coun. Def. The third Time I thought you ſaid he quarrelled with you upon his own Account?

Mr. *Colep.* Yes, on *Sunday*; then I ſpread my Hands out, I aſked him what Quarrel he had with me? Said I, What is your Quarrel with me? Says he, You ſpread your Hands out thus, and ſpoke too loud.

Coun. Def. Was that all?

Mr. *Colep.* Yes: Then I aſked him, ſaid I, Sir, is this a Reaſon you muſt ſhed my Blood, or put me under the Neceſſity of ſhedding yours?

L. C. J. When was that?

Mr. *Colep.* On *Sunday* Morning, when he overtook me.

Coun. Def. The Queſtion I would aſk you is this; You have ſaid, Sir, that Mr. *Denew* overtook you by *Little Drury-Lane* End?

Mr. *Colep.* No, Sir, he overtook me behind St. *Clement*'s Church.

Coun. Def. Then, pray, Sir, when you had ſome Parley with him, I would aſk you upon Oath, who drew the firſt Sword?

Coun. Plaint. He told you that before.

L. C. J. He has told you the Manner of it.

Mr. *Colep.* I'll tell you again: Says I, you have Skill in Fencing, that is enough; you muſt lay down your Cane: With that, he took up his Cane to ſtrike, I then ſtepped back to draw, and he was ſlower than I, becauſe his Cane hindered him.

Coun. Def. Then who made the firſt Paſs?

Mr. *Colep.* I cannot tell; I ſtood my Ground, he came up at me.

Coun. Def. I thought you ſaid you made the firſt Paſs at Mr. *Denew*.

L. C. J. He told you the Manner: He ſaid he drew his Sword, and went back, and Mr. *Denew* came up to him.

Coun. Def. I would know who made the firſt Paſs? You ſay you threw your Hat at him.

Mr. *Colep.* Yes, I did afterwards.

Coun. Def. But was it not you that made the firſt Paſs?

Mr. *Colep.* Indeed I cannot tell; if there was any Advantage, I believe I might take it.

Coun. Def. Where was the Place propoſed for your Fighting with Mr. *Denew?*

Count. Plaint. There was no Place; he way-laid him.

Mr. *Colep.* He kept cloſe to me, and would not let me ſtir a Foot from him; but I did not intend to run away from him.

Coun. Def. But you ſaid you deſign'd to meet Sir *George Rook* in *Holland*.

Mr. *Colep.* Yes.

Coun. Def. Then how came it to paſs you did not meet him?

Mr. *Colep.* Becauſe I think Sir *George Rook* had not uſed me as a Gentleman; and I don't think myſelf oblig'd to obſerve Rules of Honour with him.

Coun. Plaint. That is not fair.

Coun. Def. Had not Mr. *Denew* his Cane in his Hand, when he fought you?

Mr. *Colep.* Yes; I am glad you aſk me that Queſtion: He held his Cane in his Left Hand, and I found it inconvenient in my Paſſing; ſaid I, Coward, lay down your Cane, but he kept it in his Hand; but *Engliſh* People love fair Play, and thoſe that ſtood behind him, cry'd out, Lay down your Cane; and then he fumbled to lay down his Cane, and I threw my Peruke at him, and made a Paſs at him: This after four or five Paſſes.

Coun. Def. I beg the Favour of you to aſk you one Queſtion, You ſay the Place you ſaw Mr. *Denew* firſt was the Toy-Shop?

Mr. *Colep.* Yes.

Coun. Def Is it not an uſual Place where Gentlemen uſed to ſtand?

Mr. *Colep.* Yes.

Coun. Plaint. When you were going along the Back-ſide of St. *Clement's* Church, I aſk you in what Manner did Mr. *Denew* come after you? Did he walk very faſt, or run?---Mr. *Colep.* He run.

Coun. Queen. Did Mr. *Merriam* run?

Mr. *Colep.* I did not ſee him till he came up to me.

Coun. Def. I aſk you this; At the Time you drew your Sword, did he offer to ſtrike at you firſt?

L. C. J. Has he not told you plainly?

Mrs. *Steed* ſworn.

Coun. Plaint. Pray, Madam, will you be pleas'd to acquaint my Lord and the Jury what you know concerning this Matter, and what paſs'd between your Brother, Mr. *Colepeper*, and Mr. *Denew*, at his firſt coming to him?----Mrs. *Steed.* On the 21ſt of *Auguſt*———

Coun. Queen. Speak as loud as you can.

Mrs. *Steed.* On the 21ſt of *Auguſt*, my Lord, I went to the *Temple* to my Brother's Chamber, to go along with me into the Country, according to his own Appointment, and my Brother was not at all ready, at which I was mightily ſurpriſed; but my Brother was reſerved to me, and I could not tell the Reaſon; I was loth to leave him in Town, becauſe he had ſeveral Intimations in the Country, that he was mightily enquired after: So that, at length, I did ſift it out, that there was ſome Danger in the Caſe; and ſent my Coach and Equipage to Mr. *Steed* into the Country, that he might not come up to expoſe himſelf to Danger too: At length, while I was at my Brother's Chamber, about 11 o'Clock, a Gentleman came to the Door, whom I ſince underſtood to be Mr. *Denew*, and though I could not hear diſtinctly what he ſaid, but ſomething *about Hours, punctual in Hours, and preciſe in Time*; my Brother anſwer'd, That he had a Reſpect to Sir *George Rook*, and Sir *Jacob Banks*, on the Account of the Ladies they had married, and the Family he had married into, and never meant him Wrong.

Coun. Plaint. Say that again, what your Brother ſaid to Mr. *Denew* in relation to Sir *George Rook*.

Mrs. *Steed.* I heard him ſay he had Reſpect for them on the Account of the Ladies they had married; and never had the leaſt Intention to affront or wrong them.

Coun. Plaint. What ſaid Mr. *Denew* to the Matter?

Mrs. *Steed.* I do not know, I know no farther at the *Temple*. We went afterwards to *Cecil-Street*, and my Brother ſent a Letter to Sir *George Rook*, and the Meſſage that was brought back, was, That he expected him at his Houſe, or would ſend immediately after him; and quickly after, Mr. *Denew* came, and my Brother was gone out; then I thought it would be Time well ſpent to have Mr. *Denew* in my Lodging: Of myſelf I fancy'd, that while my Brother was abroad, he would come. I knew my Brother was at *Tom's* Coffee-Houſe in *Covent-Garden*, and I ſent my Brother Word, Mr. *Denew* was with me: I aſk'd him if he wanted to ſpeak with Mr. *Steed*, my Huſband? He ſaid, No, it was with Mr. *Colepeper*, him he wanted to ſpeak to: I ſaid I had ſent to him, and ſoon after Mr. *Denew* wanted to be gone; and I ſaid, It will make but a Comedy of Errors to go when I had ſent and expected him to return; ſo Mr. *Denew*, after ſome Time ſpent, went away: He ſaid, There was but one Coffee-Houſe in the *Strand*, and there he was to be ſpoken with. Juſt after he was gone, I went to ſeek after my Brother, and juſt as I was taking Coach with Mrs. *Harlackenden*, Mr. *Britton* came, and aſk'd after my Brother, Whether he was there, or at the *Temple?* I promis'd he ſhould know where he was; ſo I took Coach; and when I could not find my Brother, I return'd. My Brother came to my Lodgings, with Mr. *Cumin*, a *French* Gentleman, who ſpeaks *Engliſh* very ill, about dark; and a little while after, my Brother ſent to Mr. *Denew*, to the Coffee-Houſe where he had appointed, and Mr. *Denew* came in a Coach, and came up into the Dining-Room; ſays he, Mr. *Colepeper*, I muſt ſpeak with you in private: Says he, You may ſpeak here: No, ſays Mr. *Denew*, you muſt come out: Says my Brother, I have been with Sir *George Rook*, and I could not find him; either he denied himſelf, or was not at Home: Says Mr. *Denew*, That ſhall not ſerve your Turn; let us make an End of it now: Says he, Come out; God I will have you out; God I will have you out. There was a Multiplicity of Words, but my Brother was civil and inoffenſive all the while; and Mr. *Denew* menaced ſomewhat upon the Stairs, and went off. The next Morning my Brother aroſe very early, and, contrary to my Deſire very much, he went to wait upon Sir *George Rook:* I was full of Terror at that, and thought of nothing elſe, but to get Surgeons to heal the Wounds and Stabs. I knew nothing how Matters went; ſo my Brother return'd, and about Nine or Ten Mr. *Britton* came again.

L. C. J. Where?

Mrs. *Steed.* To my Brother's and my Lodgings in *Cecil-Street*; and he enquiring over Night for my Brother, and not finding him, and doubting whether he would be at the *Temple*, or at *Cecil-Street*, I ſent a Meſſenger to tell him he was at *Cecil-Street*, and I thought him to be a Mediator, or elſe I ſhould not have introduced him to my Brother; ſo when he came in, he deſired that Mr. *Bently*, and we Women would withdraw.

Coun. Queen. Who deſired this?

Mrs. *Steed.* Mr. *Britton* deſired the Women to withdraw; of whom I was one. Mrs. *Harlackenden* and I ſtood at the Door, to hear what we could, being very inquiſitive in ſo horrid a Caſe; and I heard them read ſomething, but what that was I could not tell, but my Brother told me ſince, it was Colonel *Seymour's* Affidavit.

L. C. J. Where was all this?

Mrs. *Steed.* At *Cecil-Street*, about Nine o'Clock a *Sunday* Morning: I heard him pretend to be a Mediator; he ſaid he was a Mediator, and that he had a Paper, which if my Brother would ſign, all would be well; and if he would preſerve himſelf he muſt ſign it; I did not hear what the Paper was, but my Brother told him, that was unworthy of him, as a Mediator, to tender to him ſuch a Paper, which he look'd upon as ignominious, and would rather die than ſign it: Then, ſays he, you'll be inſulted; then, ſays my Brother, I ſhall defend myſelf.

Coun. Queen. What did he ſay then?

Mrs. *Steed.* He ſaid, Sir *George Rook* was the Flower of *Kent*, and the Quarrel was of a publick Nature; and for his Part, he would ſtand and fall by him, and ſo would Twenty more.

Coun. Queen. Did he talk of any Conſultation he had?

Mrs. *Steed.* He ſaid he would ſtand and fall by him, and ſo would Twenty more.

Coun. Def. I hope you will not put Queſtions in her Mouth.

Another for Def. You do not aſk fair Queſtions.

L. C. J. She has anſwer'd very fair; pray don't quarrel.

Coun. Queen. What did he ſay farther?

Mrs. *Steed.* Mr. *Britton* came to the Door, he bid my Brother not to be in a Paſſion; I wondered he deſired my Brother not to be in a Paſſion: Said I to my Brother, Will you not go to the Stairs with him? Says he, A Villain, he has challeng'd me out.

Coun. Queen. What time of the Day was this?

Mrs. *Steed.* About 9 or 10 o'Clock.

Coun. Queen. When did your Brother go out?

Mrs. *Steed.* He went out immediately after that, and told me he was going to drink a Diſh of Coffee: I was full of Concern, for Mr. *Denew* over Night had challeng'd my Brother out, and ſaid he had a Friend below in a Hackney Coach.

Coun. Queen. Who ſaid ſo?

Mrs. *Steed.* Mr. *Denew* ſaid he had a Man in the Coach below; a Friend he had too, as well as my Brother.

L. C. J. Where was this?

Mrs. *Steed.* It was at my Lodging in *Cecil-Street*.

L. C. J. Indeed I miſtook, for I thought it was at Mr. *Colepeper's* Chamber.

Mrs. *Steed.* No, my Lord; it was in *Cecil-Street*, and when Mr. *Britton* was going: Said I, Brother, do not you attend him to the Stairs? as I thought in point of Civility he ought to do: Says my Brother, a Villain, he has juſt now challenged me out.

L. C. J. Who ſaid ſo?---Mrs. *Steed.* My Brother ſaid ſo.

L. C. J. Who did he ſay was a Villain?

Mrs. *Steed.* My Lord, I ſaid to my Brother, Why do not you wait on Mr. *Britton* to the Stairs? Says my Brother, a Villain, he has challeng'd me.

Coun. Queen. Pray give an Account of what paſs'd over Night between you and your Brother.

Mrs. *Steed.* I have ſpoken to it already; if you will have it again, I will repeat it.

L. C. J. She hath ſaid it: Have you any more, Madam?

Mrs. *Steed.* I have done with that, my Lord. Juſt after Mr. *Britton* had left my Brother, Mr. *Bently*, an honeſt Gentleman and Friend of ours, went out with my Brother, and quickly return'd, and told me of the Aſſault my Brother had had in the *Strand*; and that Mr. *Merriam* had ſaid, my Brother had been too free in his Tongue with Sir *George Rook*.

Coun. Def. You ſay, your Brother ſaid, the Villain challeng'd me; but you did not hear Mr. *Britton* make any Challenge at all?

Mrs. *Steed.* He ſaid he would ſtand and fall by Sir *George Rook*.

L. C. J. He ſaid he would be inſulted; that he would ſtand and fall with him.

Coun. Queen. And that Twenty more were engag'd; that they would make an End of it now.

Coun. Def. Madam, you were pleas'd to ſay, you apprehended Mr. *Britton* to be a Mediator: Pray, what Reaſon had you for thinking ſo?

Mrs. *Steed.* Becauſe, Sir, he had been, when I was a Child, with my Father very civilly entertain'd; and he was a Man more in Years, I thought, than to undertake ſuch a Bully-Affair.

Coun. Def. Then pray, do you know any thing of Mr. *Britton's* being ſent for to make up this?

Mrs. *Steed.* I myſelf ſent for him by my Brother's Servant, becauſe he deſired the Night before to know where my Brother was.

L. C. J. When did he come to you?

Mrs. *Steed.* My Lord, he came *Saturday* in the Afternoon, to know whether my Brother was to be ſpoken-with at the *Temple*, or *Cecil-Street*, or where: I told him he ſhould know if he had a mind to it; and apprehending him to be a Mediator, I ſent to him.

Coun. Def. In whoſe Name did you ſend to him?

Mrs. *Steed.* I did not mention any Name, but that my Brother was now in *Cecil-Street*.

Coun. Def. Did you yourſelf ſend, or know of his being ſent for more than once, or how?---Mrs. *Steed.* Never, I dare ſay, but that one Time.

Coun. Queen. I would only aſk you this Queſtion, Was there any Talk of making an End?---Mrs. *Steed.* Yes.

Coun. Queen. I only aſk you this, at the Time he refuſed the Paper, did he talk of making an End of it?

Mrs. *Steed.* He ſaid, they might make an End of it now; it was not ſo poſitive as Come and fight; but that he would make an End of it now.

L. C. J. Make an End of it now, Who ſaid ſo?

Mrs. *Steed.* Mr. *Britton.*

Coun. Def What did you mean by that? Your Brother did not underſtand him ſo; he thought that if your Brother would ſign that Paper, that *that* would make a ſpeedy End.

Mrs. *Steed.* I cannot deſcant upon his Meaning; his Terms were high, and I believe it might be fighting, and ſo I took to be his Meaning of his making an End of it.

Coun. Queen. Did he talk any thing of a Friend, then at the Time that he ſaid he would make an End of it? Did he talk of having a Friend?

Mrs. *Steed.* No, he did not.

Mrs. *Harlackenden* Sworn.

Coun. Queen. Madam, will you acquaint my Lord, and the Jury, what you know concerning this Matter of Mr. *Denew* and Mr. *Colepeper*, what you know of the whole Matter?

Mrs. *Harl. Saturday*, betwixt Five and Six o'Clock, there came a Gentleman into my Houſe in *Cecil-Street.*

L. C. J. Pray, ſpeak out.

Mrs. *Harl.* My Lord, *Saturday*, betwixt Five and Six o'Clock, there came a Gentleman to my Houſe in *Cecil-Street*, where Mr. *Colepeper* and this Lady lodg'd; I aſk'd who he was? I was not in the Room, but I ſaw him; ſhe ſaid it was one Mr. *Denew*; my Lord, he ſtaid and walk'd about about Half an Hour, and then went away again: After this, we thought, my Lord, that Mr. *Colepeper* was then with Sir *George Rook*; going about Five o'Clock from my Houſe, to wait upon Sir *George Rook*, my Couſin and I being apprehenſive of what might follow, we ſent for a Hackney Coach to get a Surgeon, thinking he might be engag'd in a Duel with Sir *George Rook*; and juſt as we were going, Mr. *Britton* came up to the Door; Mrs. *Steed* made a Curtſey to him, and ſaid, your Servant, Mr. *Britton*; and he, your Servant, Madam: Where, ſays he, is Mr. *Colepeper?* I do not know, ſays ſhe: Does he lodge here? Yes, ſaid ſhe, he is here ſometimes: She ſaid ſhe did not know whether he was at the *Temple* at his Chambers; immediately he went away in a Hackney Coach; we could not hear of Mr. *Colepeper*, and we came home again: About an Hour after Mr. *Colepeper* came in.

Coun. Queen. When was this?

Mrs. *Harl.* This was *Saturday* the 21ſt of *Auguſt*, Mr. *Colepeper* came in with a *French* Gentleman.

Coun. Queen. What Time?—Mrs. *Harl.* About Eight o'Clock.

Coun. Queen. Did Mr. *Denew* come that Night?

Mrs. *Harl.* Yes, Sir, about an Hour after that, between Nine and Ten, when we were going to Supper.

Coun. Queen. What did he ſay?

Mrs. *Harl.* Mr. *Denew* ſent Word he was there to ſpeak with Mr. *Colepeper*; Mr. *Colepeper* ſent for him up, he aſk'd him his Buſineſs; ſays he, I have Buſineſs with you; but demurr'd, as if he did not care to ſpeak before us; we ſtill continued in the Room; Mr. *Colepeper* aſk'd him his Buſineſs; Sir, ſays he, I have Buſineſs with you: my Couſin, I, and the Gentleman, ſtill continued in the Room; ſays Mr. *Colepeper*, Do you come from Sir *George Rook?* if you do, I have been with him, he was not at home, or would not be at home, or to that Effect: What, ſays he, do you ſay Sir *George Rook* denied himſelf? No, ſays Mr. *Colepeper*, I don't ſay Sir *George Rook* denied himſelf, but he was not at home, or would not be at home: Then, ſays he, you did not go at the Time: Yes, ſays he, I did, or very near it: Well, Sir, ſaid he, I have Buſineſs with you, and I would have you come down Stairs; Sir, ſays he, I have none with you, my Buſineſs is with Sir *George Rook*, and I don't queſtion but I ſhall acquit myſelf like a Man of Honour, ſays Mr. *Colepeper:* Says *Denew*, you're a Man of Honour, a Man of Honour! I don't queſtion but you will acquit yourſelf like a Man of Honour! in a deriding Way: Mr. *Colepeper* made Anſwer, it is no Buſineſs of yours, ſaid he, and I have nothing to ſay to you: Have you not, ſays he, you will find I have with you, Come down Stairs; and if that Gentleman be your Friend, let him come too, I have mine in the Coach. Mr. *Colepeper* inſiſted upon it, he had no Buſineſs with him, but with Sir *George Rook*, and he did not queſtion, but that he ſhould prove himſelf to be a Man of Honour. Says he, going down, you are a Man of Honour! you don't know what that is, you are a little Raſcal. I called to the Man, *William Paks*, *Will*, ſays I, light this Gentleman to the Coach: I thought that Word was ſo baſe, to call him Little Raſcal, that I did not tell it to Mr. *Colepeper* when I came up.

Coun. Queen. Did Mr. *Colepeper* give any ill Language at that Time?

Mrs. *Harl.* No, indeed, nothing at all; only ſaid, I have nothing to ſay to you, I do not know your Buſineſs, ſaid he, and I ſhall not go down in the dark with you; and it was ſo dark, my Lord, that we could not ſee croſs the Street when he came, and it is a very narrow Street where I live.

Coun. Queen. Do you know of Mr. *Britton*'s coming on *Sunday* Morning?—Mrs. *Harl.* Yes, I do.

Coun. Queen. Pray then give an Account of it?

Mrs. *Harl.* He came, and I did not know but he might be a Man to accommodate the Buſineſs, and we did ſend, for Mr. *Colepeper* lay in my Houſe, and he aroſe and went to wait upon Sir *George Rook*, and when he came back, he told us he had been with Sir *George.* However, I believe, the Reaſon why we ſent for Mr. *Britton*, was, becauſe I think Sir *George Rook* had told him, he had ſent the Affidavit to him, as it prov'd he had, and Mr. *Britton* came up in a very Gentleman-like Manner; but we quitted the Room, and went into the Bed-chamber; there is a Wainſcot Door between, and the Door was not quite ſhut neither.

L. C. J. Who ſent this Affidavit?

Mrs. *Harl.* Mr. *Britton*, my Lord, had the Paper in his Pocket.

L. C. J. But who ſaid the Affidavit ſhould be ſent?

Mrs. *Harl.* Mr. *Colepeper* had been told by Sir *Reorge Rook*, he had ſent it to him when the Quarrel was betwixt them.

L. C. J. Now give an Account what paſs'd between Mr. *Britton* and Mr. *Colepeper.*

Mrs. *Harl.* We left the Room to them, and they ſat down together, and Mr. *Britton* told him, that he was very ſorry for this Diſturbance between Sir *George Rook* and him; and would be very glad to accommodate Matters between them, to do a friendly Office betwixt them.

L. C. J. Who ſaid ſo?

Mrs. *Harl.* Mr. *Britton*, my Lord.

L. C. J. That he would be glad to accommodate Matters?

Mrs. *Harl.* Yes, my Lord, that he ſhould be glad to do a friendly Office betwixt them. Mr. *Colepeper* ſaid he was ignorant of the Offence againſt Sir *George Rook*, and aſk'd what Sir *George Rook* alledg'd againſt him; ſo he pull'd out the Paper: We ſaw the Paper through the Door; Mr. *Colepeper* read it, and ſaid, it was but of very little Conſequence to make ſuch a Quarrel: Mr. *Britton* ſaid, it was that which was highly reſented, and that he would be very glad to be ſerviceable on both Sides, to mediate in this Thing; Mr *Britton* ſaid this to Mr. *Colepeper*; they talk'd pretty low; I walk'd backward and forward in the Room; I did not hear every Word that was ſaid, but at laſt I heard him ſay, that he had brought a Paper to him from Sir *George Rook:* We ſaw him through the Crevices of the Door read the Paper; Mr. *Colepeper* ſaid to Mr. *Britton* upon the reading of it, is this a friendly Propoſal? before I will oblige myſelf to ſign this, I will loſe the laſt Drop of my Blood.

Coun. Plaint. What did Mr. *Britton* propoſe he ſhould do with that Paper?

Mrs. *Harl.* Sign to it, wherein he had ſaid any thing againſt Sir *George Rook*, to acknowledge it; but Mr. *Britton* got up, and ſaid to Mr. *Colepeper*, ſays he, I find you are reſolved to be hot: Mr. *Colepeper* ſaid, He would loſe the laſt Drop of his Blood; ſays he, I find you are hot, and you muſt expect what follows; for Sir *George Rook* is a Man of Honour, and hath done his Country ſuch Service, that, ſays he, every Gentleman that is acquainted with him, muſt needs think himſelf obliged to eſpouſe his Quarrel; and I am one, ſays he, and he walk'd out; and as he was going away, ſays he, You muſt expect to be inſulted.

Coun. Plaint. Did he talk of any Number?

Mrs. *Harl.* I did not hear that.

Coun. Queen. Did you ſee Mr. *Merriam* there at any Time?

Mrs. *Harl.* No, I never ſaw him there.

Coun. Queen. You ſay Mr. *Colepeper* went to Sir *George Rook*'s Houſe.

Mrs. *Harl.* Yes.

Coun. Queen. How ſoon afterwards was it that Mr. *Britton* brought this Paper?

Mrs. *Harl.* About an Hour.

Mr. *Bently* Sworn.

Coun. Def. Call Mrs. *Harlackenden* again. Who was in the Room *Saturday* Night?

Mrs. *Harl.* Mrs. *Steed*, myſelf, and Mr. *Cumin.*

Coun. Def. Nobody elſe?

Mrs. *Harl.* No, Sir; Nobody elſe: It was between Nine and Ten, when we were going to Supper.

Coun. Def. You were ſaying that Mr. *Colepeper* went to Sir *George Rook*'s, but when he came back, he told you he had ſeen Sir *George Rook.* You ſaid ſo, Did you not?—Mrs. *Harl.* Yes, I did.

Coun. Def. Was this as ſoon as Mr. *Colepeper* came Home?

Mrs. *Harl.* Yes, it was.

Coun. Def. And you could hear as much of what was ſaid by Mr. *Britton* as Mrs. *Steed*; and Mrs. *Steed* as much as you?

Mrs. *Harl.* I heard what I have ſaid.

Coun. Def. Did you not make it your Buſineſs to obſerve what was ſaid at that Time?

Mrs. *Harl.* Yes, without doubt I heard what I have ſaid, or I ſhould not ſpeak it: We were afraid the Buſineſs would go ill, therefore we were inquiſitive: And this that I have ſaid I did hear.

Mr. *Bently*'s Evidence.

Coun. Queen. Will you acquaint my Lord and the Jury, Whether or no you ſaw the Scuffle between Mr. *Denew* and Mr. *Colepeper*, at the End of *Drury-Lane?*—*Bent.* Yes, I ſaw it.

Coun. Queen. Was Mr. *Merriam* there?—*Bent.* Yes, he was.

Coun. Queen. What did Mr. *Merriam* either do, or ſay?

Bent. He ſaid nothing at all in the Scuffle. Mr. *Denew* overtook us near *Lyon's-Inn*; and as ſoon as he overtook us, ſays he to Mr. *Colepeper*, Well overtaken! Says Mr. *Colepeper*, I have been with Sir *George Rook*, and I have given him Satisfaction. Says Mr. *Denew*, That is nothing to me, you muſt give me Satisfaction for what you did to me laſt Night. Says Mr. *Colepeper*, You are Two to One: No, ſays Mr. *Denew*, you are Three to Two; but, ſays he, I'll call another, and we will end it: No, ſays Mr. *Colepeper*, I'll engage no Gentleman in my Quarrel: Then, ſaid Mr. *Merriam*, we will ſtay behind.

L. C. J. Who was the third Perſon?—*Bent.* Mr. *Cumin*, a *Frenchman.*

L. C. J. Who was it ſaid, You have Three to Two?

Bent. Mr. *Denew* ſaid, You are Three to Two; I will fetch a Third, ſaid he. No, ſaid Mr. *Colepeper*, I'll engage no Man in my Quarrel. Then, ſays Mr. *Merriam*, I will go away.

Coun. Queen. So that it is evident he came upon ſome Deſign. Hark ye, Do you know any Expreſſion made uſe of by Mr. *Merriam* at the Time of the Scuffle?

Bent. I was ſaying, It was Pity this Thing could not be made up: Says Mr. *Merriam*, Mr. *Colepeper* ought to take Care what he ſays.

Coun. Queen. What ill Language did Mr. *Denew* ſay Mr. *Colepeper* had uſed towards him?—*Bent.* I do not know.

Coun. Queen. Was you by when Mr. *Britton* came?—*Bent.* Yes.

Coun. Queen. What was it he ſaid?—*Bent.* I know not, for I retired.

Coun. Def. Was you with Mr. *Colepeper* then, when Mr. *Denew* met him by *Lyon's-Inn?*—*Bent.* Yes.

Coun. Def. Whither was he going?

Mr. *Colep.* I deſired him to go along with me; for, ſays I, I ſhall have enow upon me.

Coun. Def. Mr. *Bently*, where were you going then?

Bent. We were going to *Boſwell-Court.*

Coun. Def. Did you obſerve who firſt drew, Mr. *Denew*, or Mr. *Colepeper?*

Bent. I do not know, for I was in a ſort of Confuſion, and my Eyes were upon the Ground, and I do not know.

Coun. Def. Did you ſee Mr. *Colepeper* throw his Hat at Mr. *Denew?*

Bent. No; but I ſaw him throw his Peruke.

Coun. Def. Did he make a Paſs at him at the ſame Time?

Bent. Yes, he did.

L. C. J. What, did he take his Wig off?

Bent. Yes, my Lord; he took his Wig off with his Left Hand, and threw it at him.

Coun.

Coun. Def. What did Mr. *Denew* ſay when they were going to draw?

Bent. I do not know, I was a great Way off.

Coun. Def. When Mr. *Colepeper* came to you, or ſent for you, did not he tell you the Reaſon why he ſent for you?

Bent. I apprehend Mrs. *Steed* had ſent for me.

Coun. Def. You went along with Mr. *Colepeper?*—*Bent.* Yes, I did ſo.

Coun. Def. What did he tell you he was going to do?

Bent. He ſaid he was going to ſpeak with Mr. *Britton*; he told me he deſigned to hire a Veſſel to go to *Holland*, to meet with Sir *George Rook*, and ſaid it would coſt him 100*l.* and after that he had fought with Sir *George Rook*, he would fight with Mr. *Britton*.

Coun. Def. Did he not, upon your Oath, ſay he went to challenge *Britton?*

Bent. No, I do not remember that.

Coun. Queen. Did you obſerve any Cane in the Hand of *Denew?*

Bent. Yes.

Coun. Queen. How did he diſpoſe of it?

Bent. Mr. *Colepeper* ſaid, after ſome Paſſes, Coward, lay down your Cane; and ſo he laid it down.

Coun. Queen. Who paſſed firſt?—*Bent.* I do not know.

Coun. Queen. Did Mr. *Denew* paſs before he parted with his Cane?

Bent. Yes, he did.

L. C. J. I aſk you this Queſtion: Mr. *Bently*, did not Mr. *Denew* lift up his Cane at Mr. *Colepeper*, before any Sword was drawn? Did you ſee that?—*Bent.* No, I did not ſee that, I was at ſome Diſtance, and in a little ſort of a Confuſion.

L. C. J. How far was you behind?

Bent. I believe half the Length of this Hall.

Coun. Queen. When Mr. *Colepeper* drew his Sword, did he make up to Mr. *Denew*, or retire firſt?—*Bent.* He retired back firſt.

Coun. Queen. Upon your Oath, did he offer to make any Paſs at Mr. *Denew*, 'till Mr. *Denew* came up with his Sword drawn?

Bent. I did not obſerve that.

Coun. Queen. Mr. *Colepeper* retired, and Mr. *Denew* came forwards?

Bent. Yes.

Coun. Def. Did he not throw his Hat before any paſs?

Bent. I did not ſee that.

Coun. Def. Did he not throw his Wig before any Paſs?

Bent. No, the Wig was laſt of all.

Coun. Queen. What did Mr. *Colepeper* do then?

Bent. Mr. *Denew* ſaid it was not fair; Yes, ſays Mr. *Colepeper*, it is, and I will take all Advantages againſt Aſſaſſinators, as I take you to be for Sir *George Rook*.

Coun. Queen. What was done after the Scuffle?

Bent. They run away, they one Way, and we another; this was at the *May-Pole* in the *Strand*. We met Mr. *Britton* at *Temple-Bar*.

Coun. Queen. At the Time they met at *Lyon's-Inn*, did Mr. *Colepeper* decline?

Bent. He ſaid he had been with Sir *George Rook*, and had given him Satisfaction.

Mr. Wells *opening for the Defendants.*

I am in this Cauſe Counſel, my Lord, for the Defendants, and as for Mr. *Merriam*, I think here is nothing that they offer can affect him, as to any Challenge that he gave: He was in Company, 'tis true; he did nothing, but only gave good Advice; he did ſay indeed at laſt, Mr. *Colepeper* muſt have a Care what he ſaid; and, I think, it was good Advice if it had been well taken. And as to the other Two, Mr. *Colepeper* you have heard is the material Evidence in this Matter. Gentlemen, you will conſider who are the Witneſſes; and what are the Circumſtances of this Fact. It is, my Lord, a thing we cannot poſſibly be provided with many Witneſſes in, being tranſacted betwixt Mr. *Colepeper* and theſe Gentlemen, therefore we have the Diſadvantage in this Caſe, becauſe the Law does ſay, I muſt own, that Mr. *Colepeper* is allowed to be a Witneſs, but we cannot be Witneſſes, Gentlemen, for ourſelves, in the Matter; and it being a private Tranſaction, it is not to be preſumed that we can make any great Defence, nor have any poſitive Witneſſes; but that there was a Quarrel between himſelf and Sir *George Rook*, is declared by them: And I believe very provoking Language hath been given by Mr. *Colepeper*, which might occaſion what hath happened. As for Mr. *Denew*, he is a Gentleman of very good Faſhion; a Gentleman of Eſtate and Quality; a Juſtice of the Peace in the Country, and not ſuch a kind of Perſon as Mr. *Colepeper* would repreſent him to be: He is a Perſon that Sir *George Rook* hath an Intimacy with, and has had for a great while together. Being at Sir *George Rook*'s Houſe the 21ſt of *Auguſt*, the Day that is fixed upon, then truly Sir *George Rook* did ſay, Mr. *Colepeper* had highly offended him, and he did expect he would give him ſome Satisfaction for what he had done; upon that we do own, that Mr. *Denew*, as from Sir *George Rook*, did go in the Morning to expoſtulate with Mr. *Colepeper* the Reaſon of this Uſage; he met him about the *Temple-Gate*, and acquainted him with it; ſays he, I cannot come to you theſe two Hours, if you go into the *Rainbow* Coffee-Houſe, and ſtay two Hours, I'll come; but he did not come: And Mr. *Colepeper*, as much Apprehenſion as he had from thoſe Aſſaſſins, ſent for this Gentleman up to his Chamber in the Morning; and when he came, it is true what Mr. *Colepeper* ſays, That he ſaid, he had ſaid nothing of Sir *George Rook*, but that he was a very honeſt Gentleman.

Mr. *Colep.* I did not ſay that neither.

Mr. *Wells.* Says he, If you will ſay that, I believe Sir *George Rook* will put it up; for Sir *George Rook* is a Man that will have his Honour vindicated, for it is not fit ſuch Language as you have ſpoken ſhould be ſpoken of him. Says he, If you will go to Sir *George Rook*, I ſhall be glad, becauſe I believe there will be an End of it. No truly, Mr. *Colepeper* could not go then, but two Hours after he would go: Says Mr. *Denew*, You ſay you will come within theſe two Hours, but will you go certainly at the two Hours End? Yes, ſaid he, I will be there within two Hours; then, ſays he, I have nothing to ſay, I am very glad you deſign it. My Lord, he afterwards, as he frequently did, dined with Sir *George Rook*: Mr. *Denew*, you may think, did acquaint him with what paſſed between Mr. *Colepeper* and him, and about two o'Clock, after Dinner, there came a Meſſage from Mr. *Colepeper* to Sir *George Rook*, to tell him, that he could not meet him then, but he would meet him at five o'Clock, which is the Time Mr. *Colepeper* is agreed he was to meet: Truly Mr. *Colepeper* did not come according to his Appointment; and Mr. *Denew*, ſays he, I have ſtaid here at Home on purpoſe; I wonder he ſhould give me ſo much Trouble, and doth not come according to his Promiſe and Appointment; and then there came a Man with a Letter from Mr. *Colepeper*, a Meſſage by his Servant: It was, That he could not come then, at five o'Clock,; but, ſays he, if you would needs have me meet you, if you appoint a Time and Place, if you inſiſt upon it, I will not fail: Upon that, Mr. *Denew* being there, Tell him, ſays Sir *George Rook*, I'll ſtay at Home on Purpoſe, 'till ſuch Time as he comes; for I have a great Deſire to ſpeak with him, and know the Truth of this Matter that is ſpread ſo much abroad. He went, and he was not at Home, and he ſtaid till ten o'Clock at Night, and then he came up into the Chamber: Mr. *Colpeper* was in another Room, but Mr. *Colepeper* hearing his Voice, ſays, Let him come up Stairs (for he was a Pair of Stairs higher). Mr. *Denew* comes up; Mr. *Colepeper* * holding the Door in his Hand, would not let him, at firſt, come in. Your Buſineſs, Sir? ſays Mr. *Colepeper*. You know my Buſineſs well enough, ſaid Mr. *Denew*. He told him, That he came from Sir *George Rook*; he ſaid, That he had no Buſineſs with him; he had been with Sir *George Rook*, and he did deny himſelf, like a Scoundrel Fellow, for at Home he was, but would not ſee him, and he believed him to be ſuch another; he took this Mr. *Denew* to be a Scoundrel Fellow too, and he would have nothing to ſay to him. Mr. *Denew* ſaid, my Lord, he did not expect ſuch Language as that was; and whatever your Quarrel, ſaid he, may be with Sir *George Rook*, is no Matter, but you have given me Provocation: Says he, If you have been with Sir *George Rook*, you have heard the Matter, and ſhall not talk of it; but ſince you have given me ſuch provoking Language, you cannot expect I ſhould take it very calmly; and away went he. The next Morning, my Lord, by pure Chance, about *Temple-Gate*, he ſaw Mr. *Colepeper* in his Paſſage, and there he told him, ſays he, You may remember the Language you gave me laſt Night; it is not ſuch Language that one Gentleman ought to give to another, and you muſt conſider, and learn better Manners. Says Mr. *Colepeper*, What need have you to trouble yourſelf with Sir *George Rook*'s Buſineſs, when I have been with him? Says he, It is my Buſineſs that I concern myſelf about; and upon that, there was ſome Sort of a Challenge upon his own Account. But if this be every Tittle true, it will not juſtify the Indictment; that is, That he offered to fight the Duel on Sir *George Rook*'s Behalf; for this Quarrel was upon the Account of that Gentleman himſelf. When he came to other Witneſſes, that Gentleman who came laſt, he tells you, That it was upon his own Account, and not upon the Account of Sir *George Rook*: So that ſo far as there were any Witneſſes preſent, ſo far they give you that Account. My Lord, as to this Mr. *Britton*, there is no great Matter fixed upon him: In this Cauſe, they do own, That Mr. *Britton* was taken for a Friend, and Mr. *Colepeper*'s Siſter ſent for him as a Mediator; ſhe looked upon him as a Friend, and did rightly think ſo; for indeed, he was ſo purely in this Matter, and had no Deſign nor Enmity againſt Mr. *Colepeper*; he hearing there had been ſuch Provocation, he went purely to acquaint him, that Sir *George Rook* was angry, and he would have him make up this Matter, and ſign an Acknowledgment, but he would not; and thereupon he ſaid, Sir *George Rook* was the Darling of *Kent*, and he would be inſulted if he would not ſign that Paper; every one would eſpouſe his Quarrel, and he among the reſt, if he would not acknowledge that Rudeneſs. My Lord, this is no Challenge; Mr. *Britton* only told what the Event would be, if he did not make Acknowledgement for that Offence; every Gentleman would eſpouſe Sir *George Rook*'s Quarrel: This was only to ſhew the Eſteem Sir *George Rook* had in the Country; that Mr. *Colepeper* would be inſulted, not by Sir *George Rook*, but by the Country, and he might well think ſo, if it were true what is reported of Mr. *Colepeper*, in reference to Sir *George Rook*: But he told him what he believed the Conſequence would be; and he came purely as a Friend, and nothing elſe; ſo that, my Lord, there is nothing to be fixed, that he challenged Mr. *Colepeper* to fight upon Sir *George Rook*'s Account; he came purely as a Friend, and nothing elſe. Your Lordſhip hears that they would inſinuate, That theſe Gentlemen layed in wait, and were hired on purpoſe to affront and aſſault this Gentleman, and that they were Men fit for ſuch evil Practices and Deſigns; but there is nothing that hath been proved of that. Theſe Ladies talk of Stories they heard in the Country; and if they had a Mind to aſſault Mr. *Colepeper*, he was at his Chambers to be heard of; what need they ſo much lie in wait? And even this very Day he went abroad when this Battle happened. But, my Lord, how could it be poſſible this ſhould be otherwiſe than Chance? Mr. *Colepeper*, he lodged in *Cecil-Street*, in the *Strand*, they met him at *Wich-Street*, near St. *Clement*'s Church; it could not be preſumed, that they ſhould lie in wait there, expecting to meet with him; ſo that the very Circumſtance of the Place ſhewed there could be no Deſign of their meeting him in that Place; for how could they ſuppoſe he ſhould come there, ſince he lodged in *Cecil-Street?* And then, my Lord, it ſhews he had not thoſe Apprehenſions of Danger, that he was not ſo much concerned, as he would have us conceive; for he goes immediately out, took two or three with him: It was to challenge this Man; but he would make you believe it was not a preſent Challenge, but after he had fought with Sir *George Rook* in *Holland*, he would fight with this Gentleman there; ſo that, my Lord, this ſhews he was far from thoſe Apprehenſions of Danger as he hath pretended. We ſhall call two Noble Lords to theſe Gentlemen's Reputations, that will give an Account of theſe Gentlemen, that they are no ſuch men as they pretend; and then we hope, though it is our Misfortune not to have Witneſſes, the Matter will be taken, as in all Probability it was.

L. C. J. Mr. *Wells*, pray tell me the Affront Mr. *Colepeper* gave Mr. *Denew?*—Mr. *Wells.* I did open it to your Lordſhip.

* Not true, nor offered to be proved; but being not to the Point, was let paſs, as many other Things for the ſame Reaſon.

L. C. J. It was not plain enough for me to ſee.

Mr *Wells*. I am ſorry for that, my Lord, it is often my Misfortune; but, with humble Submiſſion, it was at Ten o'Clock at Night when he came; he told Mr. *Denew*, he had been with Sir *George Rook*. Mr. *Colepeper* ſaid, ſays he, I have been with Sir *George Rook*, but like a Scoundrel Fellow he denied himſelf at home, and you are ſuch another Scoundrel.

L. C. J. Did he ſay that?---Mr. *Wells*, Yes, my Lord, he did.

Coun. Queen. Have you any Evidence of that?

Mr. *Wells*. My Lord, we have nothing but Mr. *Denew*, and he will give his Oath on it, as well as Mr. *Colepeper* his Oath to the contrary.

L. C. J. Mr. *Colepeper*, you are upon your Oath, Did you ſay Sir *George Rook* was a Scoundrel Fellow for denying himſelf?

Mr. *Colep*. Never, neither then, nor in my whole Life.

L. C. J. Did you ſay Mr. *Denew* was a Scoundrel Fellow?

Mr. *Colep*. No, my Lord, never: I ſaw that Mr. *Denew* wanted a Colour, and I was reſolved not to give him one.

Another Counſel for the Defendants.

My Lord, it cannot be expected, as this Cauſe ſtands, that we can be able to give much Evidence: If we could do it, I would not take up your Lordſhip's Time with any Obſervations of my own; but I think it is very obſervable upon the Indictment, that the Gentlemen on the other Side have ſcarce given us Leave to make an Anſwer to what was ſaid, in reference to the Defendants.

L. C. J. You had beſt to call what Witneſſes you have; and then if you have a mind to make Obſervations you may.

Coun. Def. My Lord, we muſt firſt beg Leave to introduce another Piece of Evidence, the Paper that I have in my Hand.

Colonel Lee *called.*

Coun. Def. We would firſt beg Leave to ſhew how Mr. *Britton* went to Mr. *Colepeper* and the Gentlemen that we muſt bring, that he ſhewed the Paper to firſt: I believe, my Lord, it will appear there was nothing in the Paper but what any Gentleman might ſign.

Coun. Def. (*Speaking to Col.* Lee.) Did Mr. *Britton* ſhew you that Paper at any Time, and on what Account?

Col. *Lee*. Mr. *Britton* and I was at the Coffee-Houſe upon the 21ſt of *Auguſt*, talking of the Behaviour of Mr. *Colepeper* to Sir *George Rook*: Conſidering the different *(a)* Characters of theſe Gentlemen, we thought it adviſable to have an Accommodation; and in order thereunto, we propoſed the drawing up of a Paper; Mr. *Britton* drew it up, and upon Peruſal I *(b)* approved of it, and did think there was nothing in it but what Mr. *Colepeper*, or any Gentleman, might ſet their Hands to, without any Reflection upon their Reputation, and thought Sir *George Rook* would accept of it; and accordingly Mr. *Britton* went, and ſaid Mr. *Colepeper* was not at home. My Lord, I believe this is the Paper.

Coun. Queen. But ſuppoſe Mr. *Colepeper* would not ſign that Paper: What then?

Col. *Lee*. There was not a Word ſpoken of that.

Coun. Queen. How many Gentlemen were there talking over this Matter?

Col. *Lee*. Nobody but Mr. *Britton* and myſelf that I know; in the Room there were ſome other, but no other People knew any thing of the Matter.

Serj. *Darnell*. But was there any thing ſaid in caſe he ſhould refuſe to ſign the Note?

Col. *Lee*. No.

The Paper ſhewn to Mr. Colepeper.

Coun. Def. Is that the Paper?

Mr. *Colep*. I am almoſt ſure it is not.

L. C. J. What do you ſay?

Mr. *Colep*. Indeed, my Lord, I believe it is not.

Coun. Queen. (*Speaking to Col.* Lee.) Can you ſay it is the ſame Paper?

Col. *Lee*. I cannot ſay it is the ſame Paper.

Coun. Queen. But is that a Copy of the Paper that was drawn up?

Col. *Lee*. I do believe it is the ſame Paper.

Coun. Queen. But he was not at the Delivery of the Paper to Mr. *Colepeper*; therefore it is not Evidence.

Serj. *Darnell*. My Lord, it cannot be read; for to read it is to make it Evidence: And it does not appear by any Proof that it is the Paper, but on the contrary is ſworn by Mr. *Colepeper* not to be the Paper.

L. C. J. (*Speaking to Mr.* Colepeper.) Can you ſay it is not the Paper?

Mr. *Colep*. My Lord, to the beſt of my Judgment it is not the Paper, nor the Bigneſs of it; and there is this Clauſe left out, *That I was to ſatisfy Sir* George Rook, *and all his Friends*.

L. C. J. Was that in the Paper you had?

Mr. *Colep*. My Lord, in the Paper I had, I was to aſk Pardon of Sir *George Rook* and all his Friends, though I had never ſpoke amiſs of him.

Coun. Def. My Lord, he does not believe it to be the ſame Paper.

Mr. *Colep*. I do not believe it to be the Hand.

L. C. J. It cannot be read as Evidence.

Coun. Def. We do not offer it, my Lord, as the Paper that was actually ſhewn, but that the Jury may ſee that Mr. *Britton* went upon an amicable Deſign; we offer it ſo far.

Coun. Queen. Do you, Mr. *Colepeper*, ſay it was the ſame Paper?

Mr. *Colep*. That which was tendered to me was moſt ignominious.

The Lord Winchelſea *ſworn.*

Coun. Def. Pray, my Lord, will you be pleaſed to give an Account of what you know of theſe Gentlemen.

Lord *Winchelſea*. When I underſtood they were under ſuch an extraordinary Proſecution, I could do no leſs Right than to appear for them here: I wonder that theſe Gentlemen, that are known to be Gentlemen of good Eſtates and great Honour, ſhould be called Fencing-Maſters and Duellers. I'll ſpeak firſt of all to Mr. *Britton*, who is a Gentleman of that Eſteem and Worth in Town and Country, that I need ſay but a very few Words of him; I have long had an intimate Acquaintance with him; there is nothing can be leſs injurious to any Man than he: He is one that values himſelf upon his Honour and Reputation, and would not do a baſe Thing for the World. And Mr. *Denew* is repreſented as a Fencing-Maſter and Dueller, a Maſter of Defence; it is well known he is a Gentleman of good Repute.

L. C. J. He is eſteemed to be one that is ſkilful in Fencing.

Lord *Winc*. He has a Commiſſion from the Queen, and hath a double Commiſſion from the Prince at this Time, and is now in as good Circumſtances as any Man in the Country, and is well known to be of a good Family; and I am ſure he would be very ſorry to change *(c)* Circumſtances with this Gentleman that makes Complaint againſt him; I never knew him give Offence to any Man.

Coun. Def. Was he a quarrelſome Man?

Lord *Winc*. He is a Man of Honour, and will endeavour, when he is injured by any Man, to do himſelf Right: He hath a great Regard to his Reputation.

The Earl of Thanet *ſworn.*

E. of *Thanet*. I have known Mr. *Britton* for near theſe twenty Years paſt, and I never heard but that he acquitted himſelf, in all the Buſineſs he tranſacted, like a very worthy, honeſt Gentleman, and an underſtanding Man; and this is the juſt Character he hath in the World; and this did recommend him to the Station he is now in to ſerve the Queen: He hath been a very civil, honeſt Man, and I never heard but he was ready and willing to do all kind of good Offices. As to the other Gentlemen, I believe Mr. *Denew* to be an honeſt Gentleman; but as to Mr. *Merriam*, I never heard his Name before.

Coun. Def. Do you think, my Lord, they would be guilty of an Aſſaſſination?---E. of *Thanet*. No, indeed.

Coun. Def. Is Mr. *Britton* in any Place in the Government?

E. of *Thanet*. He has had a Place in *Dover* theſe twenty or thirty Years; and I believe, by the juſt and good Character he hath had, is made One of the Commiſſioners of the Cuſtom-Houſe.

Coun. Def. Are they taken Notice of to be Men of peaceable Temper? or, Are they quarrelſome Perſons?

E. of *Thanet*. I believe of Mr. *Britton*, by all that I know of him, that there is not another Man in *England* can believe he would have any ſuch Intention of being in an Aſſaſſination.

Lord *Win*. As to Mr. *Merriam*, hearing his Name, I ſhould have ſaid ſomething of him. He is now actually employed under the Prince and me; and I verily believe he cannot be concerned in a baſe Action.

Sir Benjamin Bathurſt *ſworn.*

Bathurſt. I have known Mr. *Britton*, my Lord, theſe twenty-ſeven or twenty-eight Years: I never knew a Man in my Life more inoffenſive, or more deſirous to do any good Office; a Man of a very good Temper; never inclined to quarrel; never provoked; but is always ready to do all the good Offices he can. Mr. *Denew*, I hear, hath been ſlightly ſpoken of, which I wonder at. He was bred a Merchant, has always behaved himſelf very well, and is a Gentleman of a good Family and plentiful Eſtate, and hath lived in great Reputation, and did ſometimes trade as a Merchant, and, that not anſwering, he lives now upon his Eſtate in the Country: As far as I have heard of Mr. *Britton*, he hath a good Character of all Mankind, and is now One of the Commiſſioners of the Cuſtom-Houſe, and I believe is very well eſteemed by all that know him.

Coun. Def. Do you think he would have been guilty of an Aſſaſſination?

Bath. No, indeed, I do not.

L. C. J. (*Speaking to the Queen's Counſel.*) I would aſk you how you fix any Crime upon Mr. *Britton?* I will ſuppoſe the Words in the Paper which he ſhewed Mr. *Colepeper* were too ſevere, and not fit for a Man to ſign: But does that make him Guilty?

Coun. Queen. My Lord, he challenged him in expreſs Terms.

Serj. *Darn.* My Lord, Mr. *Colepeper* ſays, Mr. *Britton* came to him, and propoſed the ſigning of a Paper; and that now they ſhall bring another Paper, and not the ſame that was firſt tendered to him, I think is very extraordinary, and makes againſt them: But then, my Lord, after the Paper was tendered to Mr. *Colepeper*, (but refuſed by him) immediately after that Mr. *Britton* gave the Challenge.

L. C. J. That is a Queſtion.

Coun. Queen. Says he, Sir *George Rook* is the Flower of *Kent*, does friendly Offices, promotes and advances his Friends, and there are twenty will engage themſelves in his Quarrel, and I myſelf for one.

L. C. J. Mr. *Colepeper*, Pray tell us the Matter.

Colep. Says he, I ſee you have a Friend here, and I have one hard by; Come out, and end it.

L. C. J. I have a Friend by———But this is not an Aſſault.

Colep. Says he, I will take the Quarrel upon myſelf, and I will ſtand and fall by Sir *George Rook*.

Coun. Queen. Did you hear him ſay ſo?---*Colep*. Yes, my Lord.

Coun. Queen. And Mrs. *Steed* ſaid the ſame.

L. C. J. Did ſhe ſay the ſame?---*Colep*. Yes, my Lord.

L. C. J. Mrs. *Steed*, Did you hear him ſay that he had a Friend below, and therefore he would have him go down and end it; and, that he would take the Quarrel upon himſelf?

Mrs. *Steed*. He ſaid he would make an End of it preſently; that he would ſtand and fall by Sir *George Rook*, and ſo would twenty more; and that if he did not ſign, he would be inſulted; that there were twenty engaged in the Quarrel.

L. C. J. But did he ſay, Come out, and end it now; I have a Friend hard by?

Mrs. *Steed*. I did not hear him ſay, Come out; but I heard him ſay, There were twenty more would ſtand and fall with Sir *George Rook*.

Serj. *Darn*. Did you hear him ſay any thing of coming out?

Mrs. *Steed*. He ſaid, we will end it preſently.

L. C. J. Did he ſay, Come out?

(a) Mr. *Colepeper* is glad of the different Character; and hopes the Reader will think it well made out.
(b) Whether this is any Credit to the Paper?
(c) 'Tis preſumed his Lordſhip might be miſinformed, nor are the Defendants indicted for Poverty.

Mrs. *Steed.* He ſaid, We will make an End of it preſently.

L. C. J. Call Mr. *Bently* again: Was he there then?

Colep. No, my Lord, Mr. *Cumin* was there.

L. C. J. Mr. *Bently*, Was you by then? Did you hear any ſuch Diſcourſe?

Bent. No, my Lord, I did not.

L. C. J. Was you by when Mr. *Britton* was there on *Sunday* Morning?

Bent. I was by when he firſt came in.

L. C. J. Did you hear any Diſcourſe?

Bent. No; I perceived they deſired to be alone.

Coun. Def. My Lord, I would obſerve, that the Indictment is laid ſeveral Ways: Beſides the Confederacy, they charge us with particular Offences in Challenging. As to the Beginning of the Indictment, they take in all the Defendants; there are three of them, and they ſay they entered into a Conſpiracy, to conſult and contrive how they might do a Miſchief to Mr. *Colepeper*. They begin, my Lord, only with Mr. *Denew*, and ſay, That Mr. *Denew* did offer himſelf to Duel with Mr. *Colepeper*, on Behalf of Sir *George Rook*: And as to Mr. *Merriam*, that he did meet them, and had ſome Diſcourſe with Mr. *Colepeper*. My Lord, they have endeavoured to ſupport a Conſpiracy; and if they fail of the Proof of it, they know their whole Indictment fails: As to Mr. *Britton*, and Mr. *Merriam*, there is no Evidence that can concern them; but ſuppoſe there ſhould be ſome warm Words between Gentlemen, are thoſe Words indictable, unleſs there be ſome Things premeditated, in order to bring to paſs ſuch a Conſpiracy? But, my Lord, they have not produced any Evidence whatſoever, that Mr. *Britton*, one of them, ever ſpoke to, or ſaw the other two, Mr. *Denew* and Mr. *Merriam*; ſo that, as to Mr. *Britton*, there can be no Manner of a Conſpiracy. It does not appear that he is guilty of any Fact directly; it has appeared indeed, that Mr. *Merriam* did retire; ſo that Mr. *Merriam* and Mr. *Britton* are out of the Cauſe; ſo that Mr. *Denew* is alone in the Conſpiracy: He conſpired by himſelf, and there muſt be * Three to make it a Conſpiracy; and we muſt ſubmit to your Lordſhip's Judgment how far the Challenge is indictable. Suppoſing Mr. *Britton* had ſaid, *Come out*, How is that indictable, unleſs it had been in order to an Aſſaſſination? And as to Mr. *Britton*, unleſs there be a Conſpiracy, it will not do.

Another of the ſame Side. They have laid it a joint Aſſault, as an Action of Battery, againſt Two; but upon Evidence, my Lord, in the Indictment, we ſubmit it whether it muſt not be laid ſeverally.

Coun. Queen. It is in the Indictment; they are all ſeveral Overt-Acts of the Conſpiracy.

L. C. J. Mr. *Britton* is not indeed guilty of Fighting; but the Queſtion is, Whether or no what he ſaid amounted to a Challenge?

(*Then the Lord Chief-Juſtice read over ſome of the Indictment.*)

L. C. J. This concerns Mr. *Denew* and Mr. *Marriam*; but not Mr. *Britton*.

Mr. *Wells.* My Lord, Here they have got Writers in Short-Hand; and Mr. *Colepeper* hath beſpattered Sir *George Rook*.

Coun. Queen. We deſire to know how this was, if it ſhould come abroad.

Another of the ſame. There is Nobody ſays any thing againſt Sir *George Rook*.

Coun. Def. My Lord, we deſire to be heard for Sir *George Rook*'s Honour.

L. C. J. Here's Nobody queſtions Sir *George Rook*'s Honour.

Coun. Def. Your Lordſhip will pleaſe to remember Mr. *Colepeper* did ſay in his Evidence, that he ſent his Man into the Room to look for Sir *George Rook*, that he was not there; and he ſent him up Stairs, that he was not found there; and he concluded with this, that he did verily believe that he was at Home. We will call our Witneſſes to prove that he was not at Home.

Col. *Crawford.*

Coun. Def. Will you give an Account where Sir *George Rook* was on the 21ſt of *Auguſt*, *Saturday?*

Col. *Crawf.* My Lord, I came to Sir *George Rook*'s Houſe; I believe it was that very Afternoon about four o'Clock: Says I, Sir, you appointed me to call on you about this Time; I am ready to wait upon you: No, ſays Sir *George*, I can't go with you now, becauſe Mr. *Colepeper* hath writ me a Letter, and hath appointed five o'Clock to come and ſpeak with me, and hath writ to me with a great deal of Compliment, that he will come at five o'Clock, and deſired me to be within. Said I, Sir, then I will ſtay till five o'Clock, and ſtaid till almoſt ſix. Says Sir *George*, Nobody that appoints at five will come now: Says he, We will ſend for a Coach, and go to my Lady *Hallifax*'s Houſe. We went therefore, my Lord, from his Houſe, and went no where elſe, but to ſee my Lady *Hallifax*'s Children. I ſtaid with him, my Lord, till ſeven: Says he, when he came back, (to the Porter) Who has been to enquire for me? Says he, There was ſuch and ſuch, and there has been Mr. *Colepeper*: How long ago? ſaid Sir *George*. A little while, ſays the Porter: This is very well, ſays Sir *George*; almoſt ſeven, and he appointed five o'Clock. This I have ſworn to.

Coun. Queen. We do not endeavour to affect Sir *George Rook*'s Reputation in any Reſpect; his Reputation is † indiſputable.

Colep. My Lord, I ſent a Letter at four o'Clock.

L. C. J. You ſay, you ſent one at one o'Clock.

Colep. Yes, my Lord.

L. C. J. And then ſent another at four o'Clock: Why did you ſend it?

Colep. To excuſe myſelf for not coming at the firſt Appointment; for I ſaw myſelf beſet.

Coun. Queen. We deſire to aſk Mr. *Colepeper*, what Mr. *Britton* told him of a Conſultation with Sir *George Rook?*

Colep. Mr. *Britton* told me, he was in a Conſultation with Sir *George Rook* and Mr. *Denew*, how to proceed with me: When my Letter came, he was there, and in Conſult.

Coun. Def. My Lord, We inſiſt upon it, that theſe Fellows ſhould not go on Writing.

(*Ordered, That the Writers be turned out of the Court.*)

And accordingly they were turned out at the repeated Inſtance of ſome on the Part of the Defendants, who ſhewed themſelves concerned for Sir *George Rook*'s Honour, and feared the publiſhing a Caſe that would ill bear the Light. However, thus far the Short-hand Writers had proceeded with great Exactneſs; and they are ready, by their Hand-writing and Notes, to juſtify all before-mentioned in this Trial, which by this Time was very near ended.

What follows, *William Colepeper* offers to the Reader from himſelf: Perhaps the World might be better ſatisfied, if the Whole had been taken by the Short-hand Writers, who immediately committed all to Paper; but *William Colepeper* being under a Diſability in the Caſe, is to ſupply the reſt by his Memory. And if any Doubt ſhould ariſe, (as he hopes and believes there will not) concerning the little Remainder that he undertakes to perform, he muſt appeal to the many Perſons preſent for the Fidelity and Exactneſs of his Relation.

Mr. *Colepeper* made this Anſwer to what Colonel *Crawford* depoſed.

My Lord, I was telling your Lordſhip and the Jury, that Mr. *Britton* had threatened me with twenty on Behalf of Sir *George Rook*, if I would not ſubſcribe the Paper before-mentioned. My Lord, Mr. *Britton* named four of the twenty. I have indeed thought it not proper to mention, after Mr. *Britton*, the Names of Gentlemen on ſuch an Occaſion; but ſince Colonel *Crawford* comes here voluntarily, and is ſuffered to ſwear for Sir *George Rook*'s Honour, (as I hear it called) out of the Cauſe, I think I ought to tell your Lordſhips, that Colonel *Crawford*, who makes himſelf out to have been there, (I mean at Sir *George Rook*'s Houſe) was one of the twenty particularly named to me by Mr. *Britton*: And, my Lord, I muſt farther obſerve, Colonel *Crawford* has ſworn, that Sir *George Rook* went to ſee my Lady *Hallifax*'s Children; but Sir *George Rook*, on the next Day Morning, when I waited on him at his Houſe, told me, when I ſpoke about his being denied, that he was gone to a Committee of the Council.

Then one of the Counſel for the Queen ſpoke to this Effect:

My Lord, I wonder to hear this Diſpute about Sir *George Rook*'s being at Home when Mr. *Colepeper* went to his Houſe: What Colonel *Crawford* and Mr. *Colepeper* have depoſed, is very conſiſtent: Mr. *Colepeper* ſays, he was there about five, and making his Man ſearch for Sir *George*, believed he was at Home; now Colonel *Crawford* comes and puts the Matter out of all Doubt, and proves that Sir *George* was at Home at the Time.

Here ended the Evidence; the ſumming up of which by the Lord Chief-Juſtice *Holt*, and his Lordſhip's Remarks to the Jury, Mr. *William Colepeper* thinks not proper for him to give an Account of; nor will he undertake, on his bare Memory, to print any thing ſaid by his Lordſhip.

Mr. *William Colepeper* only notes, That his Lordſhip was fully convinced of the Caſe, and that the Jury were ſo too; for, having withdrawn from the Bar, and conſidered the Matter, they brought in their Verdict as follows, and is now on the Record;

John Merriam, Not Guilty.

Richard Britton, *Not Guilty of the Conſpiracy, nor of the Aſſault, but guilty of the reſt of the Indictment, in Manner and Form as is charg'd againſt him.*

Nathaniel Denew, *Not Guilty of the Conſpiracy, but guilty of the reſt of the Indictment, in Manner and Form as is charged againſt him.*

Mr. *Colepeper* cloſes his Relation with the Particulars with which the Law cloſed it, *viz.* with the Sentence that was paſt on the *Convicted*, the next Term after the Trial.

The Court being ſat, and all the Judges preſent, the three Counſel for the Gentlemen ſpoke in Mitigation of the Offence; and though juſt Animadverſions might be made on the Matter and Manner of their Diſcourſe, yet as the Court was pleaſed to take no Notice of it, Mr. *William Colepeper* thinks it not neceſſary to make any Obſervations upon it.

Mr. *William Colepeper* having declined any Counſel, appeared in his Gown at the Bar, and ſpoke in the Caſe himſelf, and after having open'd the Nature of the Crime, and ſaid what he thought convenient to the Matter of Law, the Particulars of which he troubles not the Reader with, he concluded his Diſcourſe with Words to this Effect:

My Lord, Had any of theſe Gentlemen challenged me really upon their own Account, however I might have acted, I ſhould not have applied myſelf here for Redreſs; but Numbers are engaged againſt me, and yet the Quarrel is another Man's. *My Lord*, 'Tis within a few Days, that a Gentleman of an ancient Family in our Country has been hanged for killing a Coachman; I am under ſuch unhappy Circumſtances, that ſome of thoſe now convicted before your Lordſhips, and others indicted who have been engaged in the villainous Machinations and Attempts againſt my Life, have been ſince advanced to Places of Honour and Profit.

Here my Lord Chief-Juſtice interrupted Mr. *William Colepeper*, ſuppoſing him to reflect upon the Government.

After which, Mr. *William Colepeper* went on with due Submiſſion to his Lordſhip.

My Lord, I intend no Reflection upon the Queen or Government: Her Majeſty is an excellent Perſon; but, like all Sovereigns, ſhe is forced to hear with the Ears, and ſee with the Eyes of others. The great Man of Malice improves the Intereſt he has to obtain Preferments for his Engines. *My Lord*, I am ready to prove, That he has employed ſome of theſe Inſtruments upon me, as well before a Demand of Satisfaction, as after an Agreement of giving it him in his own Method on the Coaſt of *Holland*. I hope your Lordſhip, and the reſt of the Queen's Judges, will inform her Majeſty of her Admiral, and that he will be made a ſevere Example of her Juſtice: And, *My Lord*, I deſire your Lordſhip and all the Court, to take Notice of what I now ſay; Sir *George Rook* is the firſt Admiral of *England* that ever ſent a Gentleman a Challenge, and after it was accepted, employed others to fight for him.

Here my Lord Chief-Juſtice, and the other Judges, took Notice of Mr. *William Colepeper* again for theſe Expreſſions.

* This not Law. † Very obliging.

My Lord, ſaid Mr. *William Colepeper*, going on, I am the moſt injur'd Gentleman of my Country: The Matter of my Diſcourſe is true; perhaps the Manner may be more excuſable, than juſtifiable: Mr. *Denew* from a Captain, is made a Lieutenant-Colonel, and Mr. *Knatchbul* has a Place of 800*l. per Annum*, both ſince their Crimes. 'Tis no wonder if the extreme Senſe of my Wrong ſhould extort from me Expreſſions which your Lordſhip thinks do not become me. As your Lordſhip has reprehended me, I doubt not but you will alſo give juſt Judgment on the Aſſaſſins.

The Counſel for the Defendants then apprehending a great Fine, put Mr. *William Colepeper* in mind, that he had ſaid at the Trial, Mr. *Denew* had but a ſmall Eſtate.

Mr. *William Colepeper* own'd he had ſaid ſo, and referr'd the Fine to the Pleaſure of the Court.

Accordingly Sentence was paſt upon the Defendants as follows:

Nathaniel Denew Fin'd 200 Marks.

Richard Britton, 100 Pounds.

LIV. *The Proceedings before the* Lords *of the Council in* Scotland, *againſt* David Baillie, *in* Feb. 1703-4, *for Defaming the Duke of* Queensbury, *and the Marquis of* Anandale.

THERE having been ſeveral Letters ſtopp'd at the Poſt-Houſe in *Edinburgh*, wrote in Cyphers, *&c.* which gave Alarm to the Miniſters of a Plot intended, the Government cauſed *David Baillie* to be ſeized, who being brought before the Privy Council, the Lord Juſtice-Clerk aſk'd him, *Whether any Perſon had offered to entice him to depoſe againſt the Duke of* Hamilton, *the Duke of* Athol, *and his Brother the Earl of* Cromarty, *and others*; *as if they had been in a* Plot *againſt her Majeſty*. To this Queſtion *Baillie* had his Anſwer ready: *That the Duke of* Queenſbury, *and Marquis of* Anandale, *had been treating with him, to depoſe againſt the Perſons the Lord Juſtice-Clerk had named.*

The *Board* began to examine *Baillie*, *How*, and *when*, and upon what Occaſion he had met with the Duke of *Queenſbury*, and the Marquis of *Anandale?* All the Anſwer they could get of him, was, *That he had writ a Letter to the Duke of* Hamilton, *which contain'd all that he knew, or could ſay of what had been aſk'd him.* He was told in *Council*, That he muſt declare what he had writ in that Letter; it not being enough for him, in a Caſe of that Nature, to refer to it in general Terms. And in the mean time, leſt there might be Impreſſions, Informations, or Advices given him by the *Party*, which it was their Intereſt to do, he was committed cloſe Priſoner, which is the uſual Courſe the Privy-Council takes till the Examinations are over: But at the ſame time he was allowed Pen, Ink, and Paper, and deſired to draw up in Writing all that he had to ſay, of what he pretended to have paſt between the Duke of *Queenſbury*, the Marquis of *Anandale*, and him.

Inſtead of drawing up what he had to ſay in Writing, as deſired by the *Privy-Council*, he writ a Letter to the Earl of *Eglington*, Preſident of the Council *pro tempore*; acquainting him, That upon the whole Matter, he could ſay no more than what he had writ in that Letter, (meaning his to the Duke of *Hamilton*,) and preſſes that the Lord Juſtice-Clerk might ſhew the ſame to the Privy-Council *.

In the mean time, the Lords of the Privy-Council ſent two of their Members to the Duke of *Hamilton* for the Letter *Baillie* had writ to him; which his Grace deliver'd to them, upon the Clerk of the Council returning him an atteſted Copy. Thereupon *Baillie* was again call'd before the Privy-Council, and aſk'd, That ſince he had ſaid in general, that the Duke of *Queenſbury*, and the Marquis of *Anandale*, had endeavour'd to bribe him to depoſe againſt certain Noble Perſons; it was expected now, he ſhould give the Board all the Particulars of that Tranſaction. *Baillie* ſtill inſiſted, That he could make no Anſwer, except he had a Sight of his Letter to the Duke of *Hamilton*. The Queen's Advocate told him in Council, That by the Law he was obliged to anſwer ſuch Queſtions as were put to him by the Board; and that if the Letter he had writ to the Duke of *Hamilton* were true, he could not but remember the material Heads thereof; and if it were falſe, he ought not to continue in a Lye. The Queen's Advocate put him alſo in Mind, how unaccountable a Thing it was, That he ſhould not remember what he had writ but five Weeks before, which was the Date of his Letter to the Duke of *Hamilton*; when in that very Letter, he pretended to remember a great many Things which had happen'd to him Five Months before, which was the Time he had met with the Duke of *Queenſbury*. The Advocate inſiſted further, That his Shuffling in this Matter, carried with it, all along, a great Probability, that the Letter he had writ to the Duke of *Hamilton* had been dictated, or ſuggeſted to him; and he had ſince quite forgot his Leſſon; whereas, if what he writ then had been true, (being a Thing in itſelf ſo extraordinary,) though he might poſſibly forget ſome minute Circumſtances, it was impoſſible he could forget, in ſo ſhort a Time, the Bulk and material Parts of it; Truth being uniform; and Lies, for the moſt Part, defeating and confounding themſelves.

Baillie continued deaf to all that the Lords of the Council could ſay to him; and they, to give a fair Handle to recollect his Memory, agreed to draw up ſome Interrogatories in Writing, which they deliver'd to him, deſiring him to give in his Anſwers likewiſe in Writing, againſt the next Time he ſhould be called before them.

Accordingly *Baillie*, when remanded back to Priſon, falls to writing ſomething like Anſwers to the Interrogatories which had been given him: But, upon ſecond Thoughts, he breaks off abruptly; and to cover his Confuſion and Irreſolution, throws the Ink-Bottle upon the Paper, of Deſign to blot out what he had writ: Which Paper the Keeper of the Priſon brought to the Council.

The Council ſeeing they could have nothing from him in Writing, after ſeveral Days Time given him to do it, call'd for him again; and deſired him to anſwer the Interrogatories *Viva Voce:* And what Anſwers they were, will beſt appear, by placing the Interrogatories and the Anſwers in Order.

Baillie's *Interrogatories and Anſwers.*

1. *Interrogatory 1ſt.* What was the Riſe, or Occaſion of his being ſent for by, or going to the Duke of *Queenſbury*, and Marquis of *Anandale*, about the Plot? *And*, if it was any Diſcourſe he had had with any of their Servants or Dependants; or that either he inform'd them, or they diſcourſed him on that Subject?

Anſwer. He can give no Anſwer thereto at all.

2. *Inter. 2d.* Who brought him to the Duke of *Queensbury?* And what was ſaid to him by the Perſon who deſired him to come to his Grace? And what he anſwer'd? And about what Time this happen'd, as near as he can remember?

Anſ. The Time was about the latter End of *July*, or the Beginning of *Auguſt*; and does not remember what Mr. *Stewart*, Servant to the Duke, who brought him to the Duke, ſaid to him; and the Declarant anſwer'd, Nothing; but went away with him.

3. *Inter. 3d.* What the Duke of *Queensbury* ſaid to him? What Account he gave of the Reaſon or Cauſe why he ſent for him; or that any Perſon had recommended him? And who the Perſon was? And that he give Account of any other Circumſtance, that might have been the Cauſe or Occaſion of the Duke's Enquiry?

Anſ. Does not remember what the Duke of *Queensbury* ſaid to him; nor can he anſwer at preſent, what was the Reaſon the Duke gave for ſending for him: *And ſays*, That the Duke ſaid, he was recommended to him; but would not tell the Declarant, by whom.

4. *Inter. 4th.* What the Duke ſaid to him? What he inform'd him of either as to Things, or Perſons? And what he deſired of him? And for what Cauſe? And what Arguments he uſed, to induce him to be free and plain?

Anſ. He cannot recollect himſelf of what the Duke informed him, as to any other Perſon; and will not anſwer, at preſent, what the Duke deſired of him: Nor will he anſwer, what Arguments the Duke uſed with him, to be free and plain with his Grace.

5. *Inter. 5th.* If the Duke named to him any Perſons? And what the Perſons were? And what the Duke deſired to know of him concerning them? And what he anſwered about the ſaid Perſons, or any thing that was diſcourſed to him?

Anſ. Yes: And what theſe Perſons were, will not anſwer at preſent. What did the Duke deſire of him concerning theſe Perſons? He is not to anſwer that at this Time: What Anſwer he gave to the Duke, when he deſired to know any thing of theſe Perſons, *&c.?* Will not anſwer that neither.

6. *Inter. 6th.* If the Duke, at parting, appointed him a new Time, or ſaid he would ſend again for him? And to what Purpoſe? And, if he bid him enquire, or remember himſelf better, as to any Particular, and bring him an Account of it?

Anſ. If the Duke, at parting, appointed a new Meeting with him? Says, No: But ſaid he would ſend for him again. If the Duke did bid him to remember, or enquire, as to any Particulars, and bring him an Account of it? He cannot anſwer that juſt now.

7. *Inter. 7th.* When he met with the Duke the ſecond Time? And what was the Occaſion of it? And what further Diſcourſe was betwixt them? And if any Perſons were then named? Or he deſired to witneſs againſt them; or to witneſs any Part of the Plot; or their Hand therein; or any Correſpondence thereabouts? And what elſe paſs'd in the Second Meeting?

Anſ. At what Time he met with the Duke the Second Time, he cannot remember: And what was the Occaſion of his Meeting with the Duke the Second Time, he cannot anſwer. As to that, What Diſcourſe was betwixt them the Second Time; he cannot recapitulate every Particular that paſs'd betwixt them juſt now: And if he named any Perſons to him? Declares, Yes: And what theſe Perſons were? He will not anſwer that. And if he deſired him to witneſs againſt any Perſon? He will not anſwer that juſt now.

8. *Inter. 8th.* How long after was the Third, and then the Fourth Meetings? And if any thing occurr'd in the mean time? And what was the Occaſions of the ſaid Meetings? And what paſt therein, either as to Perſons or Things?

Anſ. When was the Third or Fourth Meeting he had with the Duke? He did not mind: And what occaſion'd the Third or Fourth Meeting with the Duke? He will not tell that at this Time: And what paſt betwixt them at the Third or Fourth Meeting, either as to Perſons, or Things? He is not to anſwer at this Time.

9. *Inter. 9th.* That you anſwer all the above Queſtions: As to the Occaſion and Manner of your coming to the Marquis of *Anandale?* And what he ſaid to, and demanded of you? And what you anſwered? And what Perſons he named to you? And what he required of you as to thoſe Perſons? And what Encouragement he promiſed you? And for what Cauſe?

Anſ. Who brought him to the Marquis of *Anandale?* Anſwer'd, A Gentleman, whoſe Name is *Bane*, as he believes: And what the Marquis ſaid, or aſk'd of him? He will not anſwer at this Time: And what Perſons the Marquis named to him? Anſwers, He is not to name them now. And what he did require of you, as to theſe Perſons?

* Theſe, and the other Letters, are all inſerted together at the Cloſe of this Proceeding.

Anſwers

Anſwers, He cannot anſwer that juſt now: And what Encouragements he did promiſe him? Anſwers, He will not tell that at this Time.

10. *Inter.* 10*th.* What moved you to go to Duke *Hamilton*, or to write to him? Who adviſed you to do ſo? Who introduced you? And what ſaid you to him, when you gave him the Writing? And if it was ſign'd by you? And what the Writing did contain? And what you remember of the Contents thereof? And if you ſhew'd it to any other Perſon; and to whom? And what his Grace ſaid to you about it? And if you was with him oftner than once about this Matter? And if you acquainted any other therewith; and who they were? And what paſs'd betwixt you and them upon this whole Subject?

Anſ. He will anſwer no Queſtions as to the Duke of *Hamilton*, at this Time.

The Examination being over, the Lords of the Council found, That his refuſing to anſwer the Interrogatories put to him was againſt Law, and an high Contempt of the Board; and deſerved a ſevere Puniſhment: And yet, notwithſtanding of their juſt Deteſtation of the Man's Villainy, their Moderation and Patience were ſuch, that they did not proceed to Cenſure 'till they had call'd him before them once more. Then he was told, that if he continued to refuſe anſwering to the Interrogatories, according to Law, they were obliged to inflict a Puniſhment adequate to his Crime. And the Queen's Advocate told him, he would proſecute him upon the Statute of Leeſing-making, and common Grounds of the Law againſt Defamation and Calumny.

While *Baillie* ſtood thus mute to whatever was aſk'd him in Council, the Duke of *Hamilton* gave in a Petition to the Board, repreſenting, That he had inform'd the Lord Juſtice-Clerk of the Letter he had received from *Baillie*; and deſired, that the Letter might be read to *Baillie* in Council; and that *Baillie* may either own, or deny it to be his Writing. On the Twenty-fourth of *February*, the Indictment was brought againſt him, in the Name of *James* Duke of *Queenſbury*, Principal Secretary of State, *William* Marquis of *Anandale*, Preſident of her Majeſty's Council, and the Queen's Advocate for Her Majeſty's Intereſt; to the following Purpoſe.

The INDICTMENT.

'THAT whereas by the Laws of this, and all other well-governed 'Realms, The Inventing, Making, and Uttering, by Writ, or 'otherwiſe, of Lyes and Slanders, to the charging and defaming of any 'Perſon, and eſpecially of Perſons of the higheſt Quality, and greateſt 'Truſts and Offices in the Kingdom, and in Matters of the higheſt Im'portance, not only touching their Honours, Lives, and Fortunes, but 'tending to miſrepreſent them to, and raiſe and endanger Diſcord be'twixt Her Majeſty and them: As alſo to raiſe Jealouſies and Diſcords, 'and to occaſion moſt dangerous and pernicious Contentions betwixt 'them and the other Peers, of the moſt eminent Quality within the King'dom, are Crimes of a high Nature, and ought to be moſt ſeverely pu'niſhed, like as by the Acts of Parliament following, it is Statute and 'Ordained in Manner after-mentioned, *viz.* By the Act *Ja. I.* par. 2. 'cap. 43. *That all Leeſing-makers, and Tellers of them, which may endanger 'Diſcord betwixt the King and his People, ſhall be challenged by them that Power 'has, and tyne Life and Goods to the King.* And by Act *Ja. Vth.* par. 6. 'cap. 83. *The aforeſaid Act is Ratified and Approven, and Ordained to be put 'in Execution in all Points:* As alſo the ſame is again ratified by ſeveral ſub'ſequent Acts of Parliament; ſuch as *Ja. VIth*, par. 14. cap. 205. And '*Ja. VIth*, par. 20. *cap.* 9. And laſtly, By the Laws both of this and 'all other Realms, To Inform againſt, or Slander, or Accuſe Perſons as 'abominable Suborners and Sollicitors of others, to Accuſe, or Bear Wit'neſs againſt Perſons of the higheſt and beſt Quality, of the moſt wicked 'and horrible Crimes and Treaſon, and Leeſe-making againſt the Queen 'and the Kingdom, is a Scandal and wicked Crime of the Higheſt Na'ture, and ought to be moſt ſeverely puniſhed: *Nevertheleſs*, it is of Ve'rity, That *David Baillie*, Brother to Captain *Robert Baillie* of *Mannoc'hall*, and now Priſoner in the *Tolbooth* of *Edinburgh*, ſhaking off all Re'gard to Truth, Honour, and Honeſty, and to Her Majeſty's Laws and 'Authority; and with a moſt pernicious and wicked Deſign (as the Mat'ter itſelf declares) to engender Diſcord betwixt Her Majeſty and Her beſt 'Subjects: As alſo to raiſe Contentions, and Inflame and Incenſe them 'one againſt the other, by moſt abominable Lyes and Slanders; did up'on one or other of the Days of *December*, 1703; and more particularly, 'upon the 22d Day of the ſaid Month, take upon Hand to write a moſt 'Falſe, Scandalous, and Abominable Information, by way of Miſſive Let'ter, directed to his Grace the Duke of *Hamilton:* Which Letter, where'of the Subſtance above rehearſed, and a Copy herewith given, as a Part 'of this Libel, the Principal put in the Clerk of the Council's Hand, 'where *David* may freely ſee it. is a moſt groſs, abominable, and defa'matory Lye; tending to raiſe Diſcords, and the greateſt Miſchiefs that 'can be imagined. Like as the ſaid *David* had the wicked Confidence, 'after having Written and Subſcribed this Letter with his own Hand; as 'can be proven by comparing the ſame with other Writs under his Hand 'he gave in to the Committee of the Council, and are likewiſe in the 'Clerk of the Council's Hands, where he may ſee them, to give or ſend 'the ſame to the Duke of *Hamilton*, who received it. And further, when 'the ſaid *David* acknowledged before the Committee of the Council, That 'he had given a written Information to the Lord Juſtice-Clerk, Informer, 'whom he knew, as he ſaid, to be the Cauſer of his Impriſonment: And 'deſired both the Lord Juſtice-Clerk to ſhew both his Informer, and com'municate the Information, as *David*'s Declaration to the Earl of *Eglington* (whereof a Copy is alſo given to him, with this Libel, and the Prin'cipal in the Clerk's Hands for him to ſee,) bears: And the Juſtice-Clerk 'had named the Duke of *Hamilton* for his Informer: His Grace was plea'ſed, when deſired by Two of the ſaid Committee, to exhibit and give up 'the ſaid Principal Letter upon the Clerk's Receipt, on an atteſted Double. 'By all which it is evident, That the aforeſaid *David Baillie* is guilty, 'Act and Part, of moſt abominable Leeſing-making, and moſt defama'tory Libelling, in Writing and Vending the ſame, as ſaid is: And that 'aggravate with all the Pernicious and Miſchievous Conſequences above'mentioned. All which being Found and Proved before the Lords of 'Privy Council, the foreſaid *David Baillie* ought to be ſeverely Puniſhed 'for the ſame, with the Pains of Law, at leaſt; conform to the 4th Act 'of the laſt Seſſion of this current Parliament, Entituled, *Act againſt Leeſ'ing-makers*, in his Perſon and Goods, to the Example and Terror of 'others to commit the like in Time coming.'

Baillie was brought to his Trial upon this Indictment; and before he came to make his Defence, he judicially acknowledged and own'd his Letter to the Duke of *Hamilton*; which eaſed the Queen's Advocate of the Trouble of adducing Witneſſes to prove his Hand-Writing.

Baillie's *Anſwers to the Indictment.*

1. It is anſwer'd for Mr. *Baillie*, *Primo*, That the Subject of the Complaint being a Matter of great Importance to him; and that the Letter which is the Ground thereof, making mention of a Plot; in relation to which, the Declarations and Affidavits of ſeveral Perſons are taken at *London*, that may tend much to the clearing of this Matter; of which, at preſent, Mr. *Baillie* is not Maſter, but is in Hopes to recover them: Probably they will be ſent down here to the Council. And that it ſeems, as yet, there is not a full Diſcovery made of the Plot; Therefore he humbly craves, that the Council may refer the ſaid Complaint to the Parliament; or at leaſt delay the Proceeding therein at preſent; that he may have a Time to recover the Declarations and Affidavits that have been taken at *London*, and other Papers, that he is to make uſe of for his Defence; and until the Enquiry, as to the Plot, be fully concluded. And he humbly deſires, That the Council may take the Point to their Conſideration, in the firſt Place.

2. The Complaint being principally at the Inſtance of the Duke of *Queenſbury*, and the Marquis of *Anandale*, and only with Concourſe of Her Majeſty's Advocate, which goes of Courſe when a Proceſs is raiſed at the Inſtance of particular Perſons, *ad vindictum privatum:* And theſe Noble Lords not being preſent to inſiſt in the Action, Proceſs ought not to be ſuſtain'd at their Inſtance. It being the known and uncontroverted Practice, That in all Criminal Actions, either intended before the Privy Council, or Lords of Juſticiary, Proceſſes are not ſuſtain'd, unleſs the Proſecutor be preſent. And the Reaſon is evident: Becauſe if he were preſent, the Defender might ſeek his Oath of Calumny, if he had juſt Reaſon to inſiſt in the Action; and propound ſeveral Objections againſt the Libel, and verify them by the Proſecutor's Oath, that might exclude the Purſuit. Of which Benefit the Defender is deprived, when the Purſuer is abſent. And Her Majeſty's Advocate hath no Intereſt to purſue this Action by himſelf; becauſe it being *Actio Injuriarum*, which is but *privata Actio Legis code de injuriarum cauſa non publici judicii, ſed privato continet quæritum*; and the Advocate, *ratione officii*, can only purſue Actions *ad vindictum publicum*, but not *ad vindictum privatum.*

3. The Complaint, in ſo far as it is founded upon the Laws and Acts of Parliament againſt Leeſing-makers, and Tellers of them, is no ways relevant to infer the Concluſion Libell'd; becauſe, as to the 9*th Act Par.* 20. *Jam.* VI. it's only of ſuch, who ſhall by Word, or Writ, *Deviſe, utter, or publiſh any foreſaid ſlanderous or reproachful Speeches, or Writes of the Eſtate, People, or Country of* England, *tending to the Remembrance of the ancient Grudges, born in Time of by-paſt Troubles:* Which does not at all concern this Caſe. And as to the other Acts of Parliament, they are only in relation to Leeſing-makers to the King, of his Barons, Great Men, and Leiges; and of thoſe that make any Evil Information of the Barons and Leiges to the King; but does no way concern Leeſing-making, or ſlandering of one Subject to another, as is clear from the Acts of Parliament mentioned in the Complaint.

4. If the Duke of *Queenſbury*, and Marquis of *Anandale*, ſpoke the Things to Mr. *Baillie* in private, in relation to the Duke of *Hamilton*, and the other Noble Perſons, which the Libel mention'd to be contain'd in the Letter; and if ſuch Expreſſions, ſpoken of Subjects to a Subject, would infer the Crime of Leeſing-making, then he behoved to reveal it, under the Pain of being guilty of Leeſing-making himſelf: It being expreſsly provided by the 209. *Act Par.* 14. *Ja.* VI. anent Leeſing-makers, and Authors of Slanders, which ſatisfies the former Laws about Leeſing-making, and further ſtatutes, *That the Concealers*, and not the Revealers, *ſhall incur the like Pain and Puniſhment.* So that if any ſuch thing had been ſaid to Mr. *Baillie*, he being obliged to reveal it by the Law, it was no Crime; and conſequently he cannot be liable to any Puniſhment; according to that Rule in Law, *Lib.* 169. *de Reg. Jul. Ejus vera nulla culpa eſt, cui parere neceſſe ſit.*

5. As the Libel is not relevant to infer Leeſing-making, for the Reaſons above mention'd, ſo it is not relevant to infer the Crime of Defamatory Libelling: Becauſe the Letter was only written to the Duke of *Hamilton* for private Information, *non animo injuriand.*; as appears from the very Beginning of the Letter; where it mentions, That the Noiſe which is every where made of a Plot, made him think it his Duty to inform the Duke of *Hamilton* of the Matter of Fact contained in the Letter: And the ſaid Letter was never publiſhed nor ſpread abroad by Mr. *Baillie*; ſo that it is evident, he had no Deſign to calumniate or injure theſe Noble Lords. And it is clear from the Common Law, and all Lawyers that have written on that Subject, *Actionem Injuriarum nunquam competere, niſi dolus & animus injuriandi adſit; quia nec injuria abſque dolo & animo injuriandi committitur*; which can never be ſaid, when a Man makes Diſcovery only for private Information. And it's a Rule in Law, That *non factum, ſed faciendi cauſam inſpiciendum. Lege* 39. *Fl. de Furtis.*

6. By the Law and Practice of all well-govern'd Nations, Informers of Crimes, whether there be Ground for the Information, or not, (for that depends upon the Expiſcation and Trial) ought to be encouraged, eſpecially as to Things relating to the Public: So that when any Man offers to inform, or make Diſcoveries, he ought not to be puniſh'd as a Leeſing-maker, or a Slanderer, albeit he cannot prove what he informs; for, ordinarily, the greateſt of Crimes, ſuch as Treaſon, Murder, Theft, or the like, are committed with the greateſt Privacy, or Secrecy: And no Man commonly uſe to commit theſe Crimes publickly, becauſe then the Probation would be clear againſt him. As for Inſtance, If any Man were inform'd of a Conſpiracy againſt the Queen and Government, and he ſhould diſcover it, as in Duty he is obliged, and would be guilty of Treaſon if he did it not; it were moſt abſurd to pretend, that he ought to be puniſhed as a Leeſing-maker, or

Slanderer,

Slanderer, becauſe he cannot prove what he inform'd. And the like in other Crimes, ſuch as, If a Perſon deſign'd to murder or aſſaſſinate another, and if that Deſign was communicated to a third Party, and he ſhould acquaint the Perſon againſt whom the Murder and Aſſaſſination were intended; it were againſt Senſe to think, that the third Perſon ſhould be liable as a Leeſing-maker, or Slanderer, becauſe he could not prove the Deſign: For if that were allow'd, no Perſon hereafter would ever diſcover any Crime, of which they have not clear Proof; and by this Means, the greateſt Crimes ſhould go unpuniſh'd, and undiſcover'd. Whereas, if theſe Crimes had been timely diſcover'd by an Informer, they might either have been prevented, or the Committers thereof brought to condign Puniſhment.

7. Mr. *Baillie* being call'd to be the Queen's Evidence, and to give Information of what he knew in relation to the Plot that was ſo much talk'd of; if, when he was examin'd before the Committee of Council, he had declared all that was contain'd in the Letter, upon his Examination, it would have been no Crime; and he could not have been thereupon accuſed as a Leeſing-maker, or Slanderer. But ſo it is, that the Letter written to the Duke of *Hamilton*, being produced before the Privy-Council by Order of the Committee, it was equivalent, and the ſame upon the Matter, as if Mr. *Baillie* had made that Declaration before the Committee. And the Letter to the Earl of *Eglinton* mentions, he deſired the Information might be produced, which was not verbal, but in Writing; and that it might be preſented to the Council, that he might have an Opportunity to own it: And therefore, if he had made the aforeſaid Declaration before the Committee of Privy Council, as it would have been no Crime, but his Duty, to have declared all he knew in that Matter, he being call'd as the Queen's Evidence; ſo, by the ſame Reaſon, he cannot be guilty of any Crime, the Letter being brought before Council, and made publick by Order of the Committee, as ſaid is.

8. That Mr. *Baillie* had no Deſign to calumniate theſe Noble Lords, may appear not only from a Letter written to him by Mr. *Stuart*, the Duke of *Queenſbury*'s Secretary, ready to be produced; and from what the Lord Preſident of the Seſſion was ſo juſt as to acknowledge in a Committee of Council, with relation to what Mr. *Baillie* had then ſignified to them, concerning the cypher'd Letters mention'd in his Letter to Duke *Hamilton*; and from ſuch other circumſtantial Adminucles as Mr. *Baillie* ſays he can adduce; but alſo from his Willingneſs to give his Oath of Calumny, That he had no Deſign to calumniate or injure theſe Noble Lords; which ought to be admitted, according to the Opinion of the moſt eminent Lawyers that have written on that Subject; and particularly *Carprez*, in his *Practique No Criminal. Par.* 2*d. Quæſt.* 97. *Quando & quibus caſibus locus non ſit actione Injuriarum. Numb.* 5*th* and 6*th*. Who is expreſs, That *Ad probationem quod animum injuriandi quis non habuerit non requiruntur exactæ & plenæ probationes, ſed ſufficiunt Conjecturæ & præſumptiones. Et ſi Reus Conjecturæ Judicis Intentionem ſuam ſufficienter probare nequirit, nihilominus tamen conſtanter perſeveret ſe verba animo injuriandi, non protuliſſe juramentum purgatorium deſuper ipſi deferendum ſi juret ab actione injuriarum abſolvendus eſt*; and *Giules lib.* 2*d. Obſer.* 106. and many other Lawyers by him there cited. And he mentions it to have been ſo decided in the Imperial Chamber. So if Mr. *Baillie* had been an Accuſer, as he is but a private Informer; yet ſeeing he is willing to give his Oath of Calumny, That he had no Deſign to calumniate, or injure theſe Noble Lords, it ought to liberate him from the Imputation of a Leeſing-maker and Slanderer, according to Law, and conſtant Practice in ſuch Caſe.

In reſpect whereof, *&c.*

To theſe Anſwers, it was reply'd by the Queen's Advocate, and the Counſel for the Duke of *Queenſbury*, and the Marquis of *Anandale*, as follows:

That the Firſt Two Anſwers are in the Nature of Dilators. And as to the Firſt, it was reply'd, That the Ordinary Judicatures are competent and proper to determine all Actions and Suits that can ariſe among the Subjects; and there lies no Actions in the Firſt Inſtance, cognizable by the Parliament. And even in the Second Inſtance, upon Appeals, or Reviews, there lies no ordinary Remedy by raiſing Proceſs before the Parliament; but Parties muſt firſt apply to the Parliament for a Warrant to raiſe Proceſſes of Appeal, or Review. And the ſame thing might be alledged in all Civil and Criminal Actions, to delay Proſecutions, upon Pretence of remitting them to the Parliament. And in this Caſe, there was nothing but a private Proceſs for a Defamation: For Mr. *Baillie* had not mention'd one Word of either Inſurrection or Invaſion; albeit the Warrant had been obtained from the Queen, under the ſpecious Notion that he was capable of making great Diſcoveries of the ill Deſigns, in relation to the Inſurrection and Invaſion. But his Diſcoveries were calculated for private Quarrels, and not for publick Uſe; and by the Law and Cuſtom of *Scotland*, the Privy-Council is moſt competent to cognize, and give Redreſs in ſuch Matters.

It was reply'd to the Second, That no Law nor fixed Cuſtom had made it neceſſary, that Complainers ſhould be perſonally preſent: And, in ſome Caſes, it had been found that it was not neceſſary. And the Duke of *Queenſbury*, and Marquis of *Anandale*, being neceſſarily abſent upon Her Majeſty's Call for the Publick Service, it were unreaſonable not to allow them to vindicate their Honour and Reputation. Although the Queen's Advocate cannot purſue in the Name of private Parties, without their Conſent and Allowance; yet, in this Caſe, both the Duke of *Queenſbury*, and Marquis of *Anandale*, ſent down their Declarations, in relation to this Matter: In which they do inſiſt, that it may be tried and puniſh'd; which is more than ſufficient to inſtruct their Warrants and Concurrence. And it is a frivolous Pretence, That if they had been preſent, Mr. *Baillie* might have aſk'd their Oaths of Calumny; that is, if they had Reaſon to deny what was contain'd in his Letter, or to inſiſt in this Proceſs. For, beſides the Abſurdities and Improbabilities in the Letter, Mr. *Baillie* never pretended to have their Oaths of Calumny; nor does the Law allow any Oath of Calumny to be aſk'd, in relation to a Crime, as Bribery and Subornation of Witneſſes; *Nam nemo tenetur jurare in ſuam turpitudinem.* So that there is not the leaſt Reaſon to demur upon the Dilators.

As to the Firſt and Second Perremptors, which are ſtated the Third and Fourth in the Defence; it is reply'd, That the Complaint is founded upon Two diſtinct and ſeparate Grounds, *viz.* Leeſing-making, which is generally underſtood to relate to the Sovereign, the Eſtates of Parliament, the Great Men and Miniſters in the Government. So this Complaint from the Duke of *Queenſbury*, and Marquis of *Anandale*, is well founded on theſe Laws: And albeit, by the Act in the laſt Seſſion of Parliament, the Laws, in relation to Leeſing-making, being too general, were reſtricted from Treaſon, or from Puniſhments inferring the Loſs of Life or Limb: Yet it is expreſly declared, That the Laws do ſtand good, and the Crimes are puniſhable by an arbitrary Puniſhment; that is, Fine, Priſon, Pillory, and Baniſhment.

The other Ground upon which the Complaint is founded, is competent in the Common Law to every Subject againſt Defamation and Calumny. And in this Caſe, the Quality of the Perſons, or the Dignity of their Offices, are only brought in as Aggravations of the Crime: And whereas it is pretended, that by the Laws againſt Slanders and Leeſing-making, the Hearers are bound to reveal, and are puniſhable if they conceal; that does only relate to Leeſing-making and Slander on the Sovereign, and the Eſtates of Parliament; and while Leeſing-making was Treaſon, and conſequently the concealing of it was Treaſon. But now, when it is neither Treaſon, nor infers a Capital Puniſhment, there is no Danger of the concealing, eſpecially when it relates only to Subjects and private Perſons. And if the Law had obliged Mr. *Baillie* to have reveal'd, yet that could be only to the Government; and to have reveal'd to a particular private Perſon could never have excuſed or ſecured Mr. *Baillie*, if he had been oblig'd to reveal, as indeed he was not.

It is replied to the Fifth, That in Law and Reaſon, an Information given to a private Party, containing a Slander and Defamation, is always taken in *Malam Partem & ex Animo Injuriandi*. Whereas, when Perſons inform a Government, make Oaths, or Declarations, being call'd thereto by Authority, it is always taken in *Bonam Partem*, and believed to be the Mind and Senſe of the Informer, who is in his Duty, or by Force of Law, obliged to make a Declaration or Diſcovery.

It is reply'd to the 6th, That it is indeed the Intereſt of the Publick, that Perſons in their Duty declaring Truth, revealing, or diſcovering Crimes, ſhould be ſafe, though they are not able to prove what they ſay; becauſe moſt Crimes are perpetrated privately: But this holds only when Diſcoveries are made to the Government, when they be forced to declare by Interrogatories, or Queſtions put to them by Authority; in which Caſe, every Subject is bound to anſwer; and ſo it is no officious or ultronious Act; and therefore the Declaration, or Diſcovery, is preſumed to be Dutiful, and to be True; and except ſuch Declarations and Teſtimonies were re-argued in a Proceſs of Perjury, and proved to be falſe, the Parties cannot be quarrelled for what they have diſcovered to a Government, or declared by Force of Law: But where Informations are given to private Perſons ultroniouſly and officiouſly, eſpecially to the Perſons concerned, to endanger Strife, there the Informer is upon his Hazard, either to make good what he has ſaid, or to be liable in Puniſhment as a Calumniator; becauſe there was neither Duty, nor Neceſſity, that obliged him to inform; and if he has done it voluntarily and petulantly, he is obliged either to make it good, or ſuffer for it.

It is replied to the 7th, That by the former Anſwer it is plain, That *Baillie* is not in the Caſe of the Queen's Evidence, as to this Letter, becauſe he had voluntarily ſign'd and delivered the ſame to a private Party, a Month before the Queen's Order to apprehend him.

It was replied to the laſt, Let Mr. *Baillie* ſay now what he pleaſes, That what he inform'd was not *ex animo calumniandi*, but only to inform the Duke of *Hamilton*, *ſine fraude & dolo*, cannot paſs; becauſe in private Informations, *dolus & culpa ſemper preſumitur*, If the Informer cannot prove, or make good what he had ſaid; and it is true, that Calumny being a Crime, cannot be committed *ſine dolo*, or ill Deſign: But the Law ſays, *lata culpa equiparatur dolo*; therefore, if that Charity could be given to *Baillie*, That he had no ill Deſign, and was only impoſed upon, or befool'd, yet that Folly is ſo groſs, that in Law and Reaſon it muſt be conſtrued equal to an ill Deſign; for if any Body will reflect upon the Letter itſelf, they will find it ſtuff'd with *Virulence* and *Malice*.

Upon a full Hearing of both Sides, there being *Thirty-one Privy-Counſellors preſent*, Baillie *was found guilty of Defamation*; *declared Infamous, and baniſh'd the Kingdom for Life*, without one contradictory Vote, and ſentenc'd to ſtand in the *Pillory* by a Majority.

June 21, 1704. A Petition was read in the Parliament of *Scotland*, of *David Baillie*, Priſoner in the Caſtle of *Sterling*, by Sentence of the Council, for accuſing the Duke of *Queenſbury* and the Marquis of *Anandale*, of a Deſign to ſuborn him againſt the Duke of *Hamilton*, the Duke of *Athol*, and others, in relation to the Plot, praying to be ſet at Liberty, which was granted, upon his finding Bail, to appear before the Parliament when call'd.

The ſeveral LETTERS *relating to* Baillie *and the* Plot, *mentioned in the foregoing Proceeding.*

Letter to the Dutcheſs of *Queenſbury*.

" *Madam, May it pleaſe your Grace,*

" LAST Night I was in a Place, where the Company was talking " of ſome Letters that were fallen into his Grace my Lord Com- " miſſioner's Hands, that Nobody could read almoſt: But a Gentle- " man, may it pleaſe your Grace, immediately replied, I am ſure I " know one that can. Madam, ſaid he to me, he is a Kinſman of " yours. I aſked him who it was? And he whiſpered me, Mr. *David* " *Baillie*, to whom I ſuppoſe (continued he) the Letters was for, for " all their being directed to *David Lindſay:* Nay, Sir, ſaid I, I can " hardly think that, for many Reaſons, and particularly, becauſe I " think Mr. *Baillie* has more Wit than to be brought into a Plot: Yes, " Madam, ſaid he, I agree with you, he has a great deal of Wit; and " that is not all, for he is very ſober; he never was drunk in his Life-time;

" Life-time; and that is a Quality makes any Perſon capable both to " manage and conceal his Buſineſs: And I do aſſure you, Madam, ſaid " he to me, I do think there is no Perſon ſo fit to carry on a cloſe Deſign, " as Mr. *Baillie*; for though I know there has been nothing done this " ten Years or more, from the other Side, but what he has been acceſ- " ſary, or privy to; yet I could never, notwithſtanding of my Religion " and Intimacy with him, diſcover whether he was ſo engaged or not, " but that I knew it perfectly well from another that is concerned, that " I hope to ſee in a Week or two; then I ſhall know the meaning of " theſe Letters. Soon after that, may it pleaſe your Grace, I went to " call for Mr. *Baillie*, where, near his Door, upon the Stairs, I met, or " rather found ſtanding, a Black, who I have ſeen in a red Coat, laced; " but he was then in a dark Grey. I went to the Door, knocked, and " went in, and enquired for Mr. *Baillie*; the Maid told me, he was not " within; then, ſaid I, I will go into his Chamber, and ſit down, and " cool myſelf; and ſo was going, but the Maid ſtopped me, and prayed " me to walk in to her Miſtreſs; who told me, I muſt excuſe the Maid; " for to tell me the Truth, Mr. *Baillie* was within, and a Gentleman with " him; but had given Orders to ſay he was out, becauſe he was to be " buſy; ſo prayed me to ſit down there a little, which I did; and after " ſome Time, what I had heard, which was a great deal more than what " was fit to ſay here, becauſe it mentioned the Perſon, who I fancy the " Black I ſee upon the Stairs, belongs to, gave me the Curioſity to aſk, " If they knew who was with Mr. *Baillie?* They ſaid, No. Dear me, " ſaid I, how frighted was I juſt now when I met the Black upon the " Stairs! What, does he belong to the Gentleman that is with Mr. " *Baillie?* I do not know, ſaid the Miſtreſs, but I ſee a Black came in " to Mr. *Baillie* this Afternoon; and it is very like he came to ſee if he " was within; for I heard Mr. *Baillie* ſay, as he went out, Give my Ser- " vice, and I will wait myſelf until he comes; and ſo he walked up and " down the Entry for above half an Hour, and then the Gentleman that " is ſtill with him, knocked, and Mr. *Baillie* let him in himſelf; and as " ſoon as he had carried him in, he came out and ſaid, I am not within " to any Body; this is all I know, ſaid ſhe: So I was obliged to go " home without ſeeing of him. But I could not be at Eaſe till I ſee " him, and ſo I found him this Morning writing, but I know not what; " yet it ſerved to increaſe my Suſpicion, for after he had done writing, " he put what he had wrote into a Play-Book, and rolled it up hard, and " tied it with a Pack-thread, and ſealed it; and in leſs than half an " Hour, which was ten o'Clock, there came a Man who I have ſeen " alſo in a red Livery Laced, with Good Morrow, Sir, I come for *Cow-* " *ley*, if you think fit to ſend him. No, anſwered Mr. *Baillie*, I cannot " ſpare him: But there is a Play will divert as well; and they may either " keep it, return, or burn it as they pleaſe; ſo away went the Man, " who was in black; and I ſaid, What Man is this? But Mr. *Baillie* " waved anſwering, and talked of the Weather, and indifferent Things; " ſo I had no other Way left to ſatisfy my Curioſity but to call out, " Nay, now I believe all I heard Yeſterday of you, Mr. *Baillie:* Pray, " what was that, ſaid he? Why, that you are a Plotter; and ſo I told " him all, and what Suſpicion his being ſhut up with him I fancied the " Black belonged to; and his ſending away Writings under the Covert " of that Play: He only ſmiled, and ſaid, I think it is certain, there " will Nobody that knows me, believe me a Plotter; for I have not a " Head for that, and I know nothing of any Letters at all, nor of any " Body that would write to me, that need to do it obſcurely: But if " they did, I ſhould not trouble any Body to explain them; neither, if I " were capable, ſhould I give myſelf the Pain to unlock any other Perſons " Letters: So I do not ſee how it concerns me at all; for that Gentle- " man's Weakneſs that was pleaſed to give me ſuch a good Character, as " he believed, I pity him for it if he deſigned it kindly; if otherwiſe, I " deſpiſe the Impertinency of it, as being altogether groundleſs, as your " Suſpicion is, Madam, ſaid he: And no doubt, whatever is contained in " thoſe Letters, is very well known before this Time; for I believe it is " only a Trick to amuſe the People with an Apprehenſion of a Popiſh " Succeſſor, that they may, with the more Eaſe, bring about the Deſign " of having *Hanover* declared here, as in *England*. And this, I ſuppoſe, " is Mr. *Scott*'s Plot, and his Father-in-Law, the Queen's Advocate, and " the reſt of our Courtiers, excepting his Grace the Commiſſioner. Nay, " it is well, ſaid I, you except him. Yes, Madam, ſaid he, I except him, " not becauſe he is Commiſſioner, but becauſe he is the beſt, if not the " only good Man amongſt them. For though I am no Courtier, I go " ſometimes to ſee them ſup; but the Dutcheſs looks always ſo hard at " me, I believe I ſhall go no more. At firſt when I obſerved her Grace " looking ſo at me, I thought it might be becauſe of my Cloaths, or my " Stockings, being ſometimes Pink-coloured, or blue, which are too " youthful for me; but *that* I find is not the Thing: For the laſt Time " I was there, her Grace ſtill looked, though I think there was nothing " remarkable, or very monſtrous about me. But I am apt to imagine his " Grace, the Commiſſioner, knows me again; which I wonder, conſider- " ing he never ſaw me but once, and that was at Night, and I was in my " own Hair; and ſo had ſhewed me to the Dutcheſs; and ſhe wonders I " come there. Why, ſaid I, ſhould ſhe wonder at that? Nay, that I " cannot tell, ſaid he; except it be, that ſomebody has done me the " Favour to let the Duke of *Queensbury* know, or at leaſt believe, I could " do him ſome Manner of Service laſt Winter while I was at *London:* " And his Grace was pleaſed to ſend for me by Mr. *Stewart*. But tho' " I imagined what it was, yet I ſeemed ignorant, becauſe I could not " have done what would have been of Service to his Grace, without in- " juring others; though for what I know, I might as well have done it " as not. Nay, ſaid I, if it be ſo, why do you not do it ſtill? No; that " Time, ſays he, is paſt: Not but that I know that it would be of more " Service to his Grace than that would have been, or any Thing elſe " that can happen to him. Pray, for God's ſake, tell me what that is, " ſaid I. No, no, Madam, ſaid he, have a Care of that: It is not for " you, or any Woman to know that, without it were the Queen; nor " any Man, except it were the Queen's Commiſſioner. And if he knew " his Enemies, I think, would have a cold Coal to blow at. But, Ma- " dam, we have ſaid enough of this: So, and it pleaſe your Grace, I " ſtayed ſometime longer; then bid adieu; and was no ſooner got " Home, but I undertook to give your Grace this Trouble; which I " hove done with all the Exactneſs my Memory would ſerve me, and " which I thought myſelf obliged from two powerful Reaſons: Firſt, I " have the Honour to be of your Grace's Country; and the next, I have " received many extraordinary Civilities from your Grace's moſt noble " and incomparable Brother, my Lord of *Burlington:* And therefore, if " your Grace thinks fit to take Notice of this, I hope you will order it " ſo, that Mr. *Baillie* may not ſuſpect me for having given your Grace " any Intelligence; for that might prove of very ill Conſequence to me, " being a Stranger, if your Grace ſhould intimate this to any Perſon but " the Commiſſioner, who, no doubt, will certainly find it turn to ac- " count, to gain Mr. *Baillie*. He lodges at Mrs. *Arbuthnet*'s, in *Ken-* " *nedy*'s Cloſe, near the *Tronne*.

" *May it pleaſe your Grace,*

" *I am your Grace's*, &c."

About the 11th of *October*, the Day before the Marquis of *Anandale* left *Scotland*, to attend her Majeſty upon a ſpecial Call, there was a Letter directed to him, writ in the ſame Hand with that to the Dutcheſs of *Queensbury*, ſigned *Charlotte Conſtable*, in the following Words, *viz.*

LETTER *to the Marquis of* Anandale.

My Lord,

" THE Deſire I have to ſerve your Lordſhip, puts me upon giving " your Lordſhip this Trouble; which is, in few Words, to let you " know, my Lord, That one Mr. *Baillie* has it now in his Power to do " an extraordinary Piece of Service, to the Advantage of the QUEEN's " Affairs, and your Lordſhip's Intereſts, which to me ſeems inſeparable: " Therefore do not ſlight the Advice of her that loves you, and wiſhes " your Proſperity and Glory; but ſend for Mr. *Baillie*, who is truly, to " do him Juſtice, a Perſon of great Merit and clear Senſe, and gain him " to be yours. And though I muſt not be particular at this Time, my " Lord, yet I will tell you that he is able to adviſe you of what will put " the *Queen*'s Enemies and your own into your Power, and for ever de- " feat their Deſigns. I think I need ſay no more, the *Queen*'s Service " and your own Intereſt are ſufficient Perſuaſives to Diligence and Care; " only I am to beg of you, my Lord, not to ſay any Thing of this Inti- " mation that I have given your Lordſhip, to any Perſon; for I ſuppoſe " you need not want a Pretence to ſend for Mr. *Baillie* to come to ſpeak " to you; and I have as little Reaſon to doubt but your Lordſhip, if he " comes to you, will take all the kind and friendly Ways to gain the " Point: To make which the more eaſy, you may tell him, You know " very well that at this very Time, there is Deſigns carrying on both " in *England* and *Ireland*, as well as in *Scotland:* And though you do not " know all the Particulars, and Perſons concerned, yet you know that " he does; and that is not all, for your Lordſhip may intimate that " you know that my Lord *D———d*, the Night before he went out of " Town, came to Mr. *Baillie*'s Chamber about ten o'Clock at Night, " and ſtaid ſtill Eleven; at which Hour came a certain Duke, and a little " after another Titular or pretended Duke in Women's Cloaths, and " ſeveral others, to the Number of eleven Perſons; and ſtaid till about " four o'Clock in the Morning. This Hint is ſufficient to your Lord- " ſhip, for you muſt manage all with Secrecy and Caution, and give no " Alarm by Unkindneſs or Violence. Now, my Lord, I am to tell " your Lordſhip, Mr. *Baillie* lodges the very firſt Cloſe above the Sign " of the *Sun*, on the South-ſide of the Way, at one Mr. *Killies*. I am, " my Lord, your Lordſhip's unknown, but moſt loving and hearty " Well-wiſher, and moſt humble Servant,

" CHARLOTTE CONSTABLE."

The Letter directed thus: *To the Right Honourable the Marquis of* Anandale, *Lord Preſident of Her Majeſty's Privy Council.* And in a Cover directed to Mr. *Campbell*, at the Marquis of *Anandale*'s. And wrote within, *Sir deliver the incloſed immediately to your Lord.*

Upon the 22d of *December*, *Baillie*, after he had been at the Lord *Belhaven*'s, came to the Duke of *Hamilton*'s Lodgings, where he delivered a ſigned Declaration, by Way of Letter to his Grace, in the following Words:

Edinburgh, Decemb. 22d, 1705.

May it pleaſe your Grace,

" THE Noiſe that is every where of a Plot, makes me think it my " Duty to inform your Grace what happened to me during the " laſt Seſſion of Parliament; which, in a few Words, was this, The " Duke of *Queensbury*, then Commiſſioner, ſent for me, (but by whoſe " Inſtigation I was never able to learn) and after a great Profeſſion of " Kindneſs, and Declaration of Readineſs to do me Service, his Grace " did alledge, That he had it from very good Hands, that there were " Deſigns carrying on in *Scotland*, *England*, and *Ireland*, to ſubvert the " preſent Government, and to reſtore the Prince of *Wales*; and as he " alledged, I was not ignorant of them; ſo that he hoped and en- " treated me for his Sake, as well as my own, and above all, for the " Preſervation of Her Majeſty's Perſon and Government, to let him " know the whole Matter. To which Demands, I was obliged to " anſwer, though not without Surprize, and extreme confuſion: Yet " Truth, which I hope ſhall ever guide me, obliged me to declare my " own Innocence, and my Ignorance of all ſuch wicked Enterprizes.

" But the Duke of *Queensbury* ſtill inſiſting, I was obliged to offer to " withdraw; but when I was going, he called me back from the Door, " and bid me conſider his Kindneſs to me, for he had now not only of- " fered me his Service, but his perſonal Friendſhip; and deſired me to " think well what I did, for he would not leave me ſo; which indeed I " found to my no ſmall Mortification; for a few Days after, he ſent Mr. " *Stewart*, the ſame Gentleman that he had employed to bring me to him " before; and Mr. *Stewart* having left the Room, the Duke went to his " Cabinet, and as he was opening it, told me, He would ſhew me a Ra- " rity; but having ſearched ſome of the Drawers of his Cabinet, he " ſeemed as if he had been ſurprized, and ſaid, he believed he had left what " he look'd for with his Wife, and had forgot; ſo he went to the Door, " called, came back again, and ſat down, and would needs, whether it was " Reaſon or not, force me to do the like: And then he told me, He had " a mind to ſhew me three Letters, that were carried by the Miſtake of " the Poſtman to wrong a Perſon, that it ſeems was of the ſame Name; " that no doubt they contained Matters of dangerous Conſequence againſt " the Government: Juſt as he had ſaid that, Mr. *Brown*, that is his *Va-* " *let de Chambre*, came and whiſpered him, and when he was gone, the " Duke told me, That the Dutcheſs had let the Preſident of the Seſſions " carry away the Letters; but however, ſaid he, I know very well you " know what is in them, and more too. Which when I replied, it was im- " poſſible, having never ſeen them: He ſmiled, and ſaid, I will warrant you do " not know nothing of my Lord Number *Three*, or *Seven*, nor *Phirlotheus:* " Not indeed, my Lord, I anſwered, I know nothing of what your Grace " means. Then you do not know Duke *Hamilton*, my Lord of *Athol*, " nor the Chancellor; nor never ſo much, as heard of my Lord *Drum-* " *mond*, *Belhaven*, nor my Lord *Tarbat*, nor *Blantyre:* Well, well, " ſaid he, Mr. *Baillie*, you will ſay nothing to me, but you ſee I am not " ſo ignorant as you take me to be, for I know very well who are Pen- " ſioners to *France*, and who are not; Nay, I know my Lord of *Athol*, " and your Convert, the Chancellor, is amongſt the firſt of them now, " tho' may be they have not been ſo long as your great Duke of *Hamilton*, " *Mareſchal*, and *Belhaven*, for I know the Duke of *Hamilton* has been " ſo theſe many Years. But when I again, and again aſſerted the Truth, " That I knew nothing of all that, and that if your Grace, and all the " reſt of the Noblemen named, were as ignorant, and as innocent as I, " certainly they were miſrepreſented to his Grace, for they were generally " believed to be the beſt Men of the Nation: At which he cryed out " mightily, and told a great many wicked Things that had been done by " your Grace, as he pretended: But I will not now trouble your Grace " with a Relation of them at this Time, deſigning, if it pleaſe God I live, " to publiſh the whole Conference at large, both to ſatisfy my Conſcience, " and Country, of the Duke of *Queensbury*'s Practices to gain me to " make the moſt horrid of all Lyes, and the moſt dangerous, for he of- " fered me great Preferments, and Money, even what I pleaſed, if I would " but, as he termed it, tell the Queen what he would tell me; for it " ſeems, I would force him to be plain with me, becauſe I would not un- " derſtand. But if I would go to the Queen, and tell her Majeſty, That " Duke *Hamilton*, *Athol*, the Chancellor, and the above-named Lords, " are actually Penſioners to *France*, and that they had a Public *Bank* and " *Managers* for buying up Arms, and other Stores of War, then he would " not only promiſe, but perform. And if I could undertake this, then he " would immediately let me ſee a Liſt of all thoſe he would have brought " into the *Plot*, and he would ſwear never to let any Perſon know but " that it was a real *Plot:* And that I had made the Diſcovery firſt to him; " and that he had ſent me to the Queen: I ſay, provided I would ſay af- " ter him, and ſwear to it. Your Grace may imagine, I was not a little " put to it for an Anſwer, and, as I remember, it was this: That I " thought his Grace's Advices were certainly the beſt, where there was " a real *Plot*: But for a Perſon to ſwear a Lye to the Queen, upon Per- " ſons that were altogether innocent, ſo far as I knew, it was what I " hope that I ſhall never think of but with Trembling and Deteſta- " tion: But if any thing occurred to me, the Diſcovery of which might be " a Service to the Queen, or my Country, none would be readier than " myſelf. This, may it pleaſe your Grace, I thought fit to advertiſe you " of, being a ſhort Abridgment of what paſt 'twixt the Duke of *Queens-* " *bury* and me. But it ſeems to me, he having failed in his Attempt on " my Integrity, employ'd the Marquis of *Anandale* on the ſame Deſign; " who did, to do him Juſtice, uſe me after another manner. For having " got me into his Clutches, if I may ſpeak ſo; for he ſent for me the " very Day before he went to *London*, and would not part with me, he " ſaid, till I went to *London* with him, to let the Queen know how well " ſhe was ſerved b ythe Duke of *Athol*, who, he knew, had been at my " Chambers with your Grace in Women's Cloaths, and that there came " there, all that I named before, and my Lord *Drummond*, and *Jerviſwood*, " and ſeveral others, to the Number of Eighteen: And that there they " treated of bringing home the *Prince of Wales*, and all that was neceſſary " for ſuch an Enterprize. To which, when I anſwered, there was never " any ſuch Meeting, he ſaid, we ſhould underſtand one another better " when we got into *Engliſh* Ground: For he thought it was unneceſſary to " tell me, That I muſt not only ſay there was ſuch a Meeting, but ſwear " it; which if I did, I would have it in my Power to make myſelf for ever, " and might be an *Officer of State* before I left *London* again. But when " I reply'd, that I was not fond of ſwearing a Lye, and that it was impoſ- " ſible for me, to bring myſelf to think of ſuch a thing; and that I would " not, tho' I had never ſuch an Inclination to go to *London*, to go on that " Score, therefore I hop'd he would excuſe me. But he was ſo far from " that, he flew in a Paſſion, and ſwore he would be revenged. And when " he ſee that did not prevail neither, he fell a coaxing me again; but " I thank God, he did not ſucceed that Way neither. Yet I told him at " parting, I was his humble Servant; which I really would have been, " ſo far as never to have laid open this moſt abominable Villainy; tho' " ſure nothing could be more provoking, than to be ſent for by People " I had never had Converſe with, nor Obligation to, nor Dependence up- " on: And there to be flattered with great Rewards, if I would become a " Villian, the moſt perjured of all Lyars; but threatened to De- " ſtruction, if I retain'd my Integrity and Loyalty. For ſurely, " let that Sett of Men pretend what they will, nothing can be more " diſloyal, than thus to abuſe the beſt of Queens, and to endanger " the beſt of ſubjects, and indeed the only ſound Part of the Nation: And " who, if there were any thing to be attempted, would certainly ſtand by " the Queen, and Country, when ſuch Men as the Duke of *Queensbury*, " and Marquis of *Anandale*, would deſert both. May it pleaſe your " Grace, I was ſaying before, I would never ſaid any thing of this, had " not the Noiſe of a *Plot* met me every where, and I confeſs I had no longer " Patience. And I never think of my Silence, but am ready to die with " Apprehenſions of the Dangers, that the Duke of *Athol*, and a great many " other Perſons are fallen into; which perhaps I might have in ſome mea- " ſure prevented, if I had ſooner given your Grace the Truth of this, that " you might have warned the Duke of the Deſigns of his Enemies, which " I hope you will do now without further Delay. May it pleaſe your " Grace, I am Your Grace's moſt humble Servant in all Sincerity and " Truth.

" *Sic Subſcribitur*,
" DAVID BAILLIE."

The LETTER *to the Earl of* Eglington, *Preſident of the Council*, pro Tempore.

My Lord,

" FROM what my Lord Juſtice Clerk ſaid, I find that I owe my pre- " ſent Misfortune to him; and that it was his Lordſhip that procured " my Confinement, upon the Information given him, by whom I know " not: But he may pleaſe to know, that I gave no Information to any " Perſon, in relation to that Buſineſs that happened to me, from his " Grace the Duke of *Queensbury*, or my Lord Marquis of *Anandale* con- " ditionally: for I left it to them, whom I informed, to make what Uſe " they pleaſed of my Information. So conſequently my Lord Juſtice " Clrek may, without the leaſt Scruple, produce his Informer, and He " my Information, which was not Verbal, but in Writing. Therefore, " my Lord, if you pleaſe, this is what I think moſt honourable for me; " becauſe, as I underſtand my Lord Juſtice Clerk, it was three Weeks " ſince he had notice of this Buſineſs, but that he delayed apprehending " me, becauſe the Perſon that ſpoke of me to him, did not think it fit to " attempt it, 'till there was a Warrant to ſeize me, becauſe I was a Gen- " tleman. Now, my Lord, I think what he was pleaſed to add, would " not have given me the Aſſurance, to have aſſumed that Title to myſelf, " for it is a very glorious One, and it ſhall be one of the chief Studies " of my Life to maintain it. And therefore, my Lord, without Preju- " dice, or Diſobligation, or Obligation, to either the Duke of *Queensbury*, " or the Marquis of *Anandale*, or my Lord Juſtice Clerk, I do plainly ſay, " that whatever Information I gave on this Affair, was in Writing, and " without either Caution or Security for my own Safety; which, I think, " will by my own Innocence be beſt ſecured to me, not but that I hope all " Juſtice from the Board, where my Lord *Eglington* ſits, and ſo do moſt " earneſtly beg, that your Lordſhip will be pleaſed to deſire my Lord " Juſtice Clerk to ſhow the Information I have already given; which, I " think, will abundantly ſhow how little I regard the Eaſe of my Perſon, " when it comes in Competition with that of my Conſcience, for I will " always ſpeak Truth, through the Aſſiſtance of God, whatever be the " Conſequence. Now, my Lord, I am really ſo ill, that I am ſcarceable " to ſay any thing of what the Earl of *Glaſgow* ſeems to lay ſome Streſs " upon; my not owning readily enough, (as he thinks) the Signification " of every Word in Mr. *Steel*'s Letter: I will only ſay this, That Mr. " *Steel* and I have converſed long, and very frequently, and with great " Freedom, but without any other Deſign than to divert and amuſe with " little Jeſts of good Humour: For ſometimes Hours to one another would " be all Railler*y*, after our manner; ſome all Tenderneſs; ſome all Scandal; " ſome all Gallantry; ſome all Buſineſs; ſome all Devotion; and ſome all " together; and ſome all Commendations, and Services, to the Lord knows " who; to the acquainted, and unacquainted. But I cannot think this, " or that if Mr. *Steel* had named all the People of both Nations that were " at *London*, when I was there, and deſired me to give his Service to them " all, if I ſee them, that there is any thing in this, to oblige me to deny it; " for I think Mr. *Steel* may very freely own any thing he ever wrote to me in " his Life, and I am ſureI will own any Letter I ever wrote to Mr. *Steel*. " My Lord, excuſe this, I am ſenſible I have ſtrayed from your Lordſhip's " Orders, but the Reaſon why I did ſo, was, becauſe my Lord Juſtice " Clerk did ſeem to ſay as much, as if it were to ſecure his Informer from " the Suſpicion of a falſe Accuſer, that I was taken into Cuſtody, fearing " I might either deny, or go out of the Way. As to the denying Truth, " I think no human Force could induce me to do that: And as for my " going out of the Way, I had no Inclination, for if I had, I am ſure I " have had Time and Opportunity enough theſe ſix Weeks to have done " that: For upon the very firſt breaking out of the *Plot*, at leaſt, ſo as to " be publick here, I ſent a written Account of what had happened, " which I am ſure is Truth, as to the Matter of Fact which I am ſo far " from denying, that I deſire your Lordſhip may procure my Lord Juſtice " Clerk to preſent the Paper to the Council, if you think fit; tho' I do " ſay it was not to his Lordſhip that I ſent it; yet it is certain it has been " communicated to him; and I deſire to have an Opportunity to own " it, as well to free the Perſon that communicated it to the Juſtice Clerk " from the Suſpicion of a malicious or falſe Accuſer, as to ſatisfy your " Lordſhip. To do which, and to obtain my Liberty again I will do " every thing becoming a Chriſtian and a Gentleman, a Priſoner but no " Plotter. My Lord, I beg leave to ſay, that I am,

Edinburgh, Talbooth,
Feb. 8, 1704.

" My Lord, Your Lordſhip's moſt Humble and
" very Obedient Servant.

To the Right Honourable
The Earl of *Eglington*.

" *Sic Subſcribitur*,
" DAVID BAILLIE."

LV. *The*

LV. *The Trial and Condemnation of Capt.* John Quelch, *and others of his Company,* &c. *for ſundry Piracies, Robberies, and Murder, committed upon the Subjects of the King of* Portugal, *Her Majeſty's Ally, on the Coaſt of* Braſil, &c. *at the Court-Houſe in* Boſton, *on the* 13*th of* June, 1704.

At a Court of Admiralty held at Boſton, *in Her Majeſty's Province of the* Maſſachuſetts-Bay *in* New-England, *in* America, *the* 13*th Day of* June, Anno Dom. 1704.

P R E S E N T,

Joſeph Dudley, Eſq; Captain-General and Governor in Chief of the Provinces of the *Maſſachuſetts-Bay* and *New-Hampſhire*, in *New-England*, in *America*, and Preſident of the Court, *&c.*

Thomas Povey, Eſq; Lieutenant-Governor of the Province of the *Maſſachuſetts-Bay.*

John Uſher, Eſq; Lieutenant-Governor of the Province of *New-Hampſhire.*

Nathaniel Byfield, Eſq; Judge of the Vice-Admiralty, for the Provinces aforeſaid.

Samuel Sewall, Eſq; Firſt Judge of the Province of the *Maſſachuſetts-Bay* aforeſaid, and One of the Council.

Iſaac Addington, Eſq; Secretary, and One of the Council.

Jahlael Brenton, Eſq; Collector, *&c.* of Her Majeſty's Cuſtoms, *&c.* in *New-England.*

Eliſha Hutchinſon, *John Phillips*, *John Foſter*, *John Wally*, *Joſeph Lynde*, *John Thatcher*, Eſqrs. *Eliakin Hutchinſon*, *Penn Townſend*, *Edward Brumfield*, *Samuel Legg*, *Iſaac Winſlow*, *Samuel Appleton*,

Members of Her Majeſty's Council, in the Province of the *Maſſachuſetts-Bay*, &c.

The COURT *being Sat: Proclamation was made for Silence.*

AND then the Statute made in the Eleventh and Twelfth Year of the late King WILLIAM, Entituled, *An Act for the more effectual Suppreſſion of Pyracy:* And alſo the late King WILLIAM's Commiſſion under the Great Seal, purſuant to the Act aboveſaid, conſtituting the Court, *&c.* were publickly read.

After which, *John Valentine*, Gent. Notary Publick, was ſworn Regiſter of the Court by the Preſident: And then the Regiſter adminiſtered the Oath preſcribed to the Preſident; and then the Preſident adminiſtered the Oath to the other Commiſſioners in open Court, purſuant to the Act aforeſaid.

And then the Court was opened by Three Proclamations, as a Court of Admiralty, for Trial of Pirates, *&c.*

After which was read Her Majeſty's Proclamation, ſignifying Her Royal Pleaſure, That all Perſons being in Office of Authority, or Government, at the Deceaſe of the late King, ſhould ſo continue till Her Majeſty's further Directions: Then was read Two Inſtructions from Her Majeſty to his Excellency, in the Trial of Pirates, to govern the ſame according to the aboveſaid Act of Parliament, and Commiſſion thereupon.

A Warrant having been ſigned by ſeveral of the Commiſſioners to the Keeper of the Priſon, to bring Captain *John Quelch* before them, to anſwer ſeveral Articles of Piracy, Robbery, and Murder, exhibited againſt him and Company, purſuant to the Governor's Order for the Setting of the Court this Day.

The Court adjourned to Three of the Clock in the Afternoon.

When the Court being met, and opened, *Matthew Pimer*, *John Clifford*, and *James Parrot* (the firſt of whom had ſurrendered himſelf quickly after his Arrival to his Excellency the Governor), were brought to the Bar, and Arraigned upon ſeveral Articles of Piracy, Robbery, and Murder, drawn againſt Captain *Quelch*, and others his Accomplices,

Of the Tenor following, *Mutatis Mutandis.*

At a Court of Admiralty, held at Boſton, *in Her Majeſty's Province of the* Maſſachuſetts-Bay, *in* New-England, *in* America, *the Thirteenth Day of* June, Anno Dom. 1704. *And in the Third Year of the Reign of our Sovereign Lady* ANNE, *of* England, *&c. Queen.*

ARTICLES of Piracy, Robbery, and Murder, then and there exhibited againſt John Quelch, *late of* Boſton, *in the ſaid Province, Mariner, Lieutenant of the* Brigantine Charles, *whereof* Daniel Plowman, *Mariner, deceaſed, was late Commander.*

You ſtand here accuſed of Piracy, Robbery, and Murder.

Imprimis. THAT notwithſtanding the ſaid Brigantine was fitted out by ſeveral worthy Merchants of *Boſton*, good and loyal Subjects of Her Majeſty, (againſt the *French* and *Spaniſh* Kings, their Vaſſals, Subjects, and Allies, the declared Enemies of Her moſt Sacred Majeſty Queen ANNE) who obtained a Commiſſion for that Purpoſe, from His Excellency, *Joſeph Dudley*, Eſq; Her Majeſty's Captain-General, Governor, and Commander in Chief, in and over the ſaid Province; by Force whereof, and in purſuance of the neceſſary Inſtructions to your Commander, the ſaid Captain *Plowman* delivered (whereof you were apprized), He, with his Company, ſailed in the ſaid Brigantine from *Boſton*, the Fourth Day of *Auguſt*, 1703, for *Newfoundland*, and *L'Accade*; but falling violently ſick, and languiſhing in his Cabin, you, with divers others, for ſome Time, bolted the Cabin Door upon him, and he, ſhortly afterwards, *That is to ſay*, the ſixth Day of the ſaid Month of *Auguſt*, died; you neglecting his Orders, and thoſe of your Owners, to return with the ſaid private Man of War to *Boſton*, would not ſet on Shore *Matthew Pimer*, and *John Clifford*, Two of your Company, who (dreading your Piratical Intention) earneſtly deſired the ſame; but bore up the Helm to Sea, directing your Courſe for *Ferdinando* Iſland, and the Coaſt of *Braſil*, whereby it is open, manifeſt, you intended Murders, Piracy, and Robberies; which afterwards you perpetrated.

I. For that you, the ſaid *John Quelch*, with divers others, on, or about the Fifteenth Day of *November*, 1703, in the Second Year of Her Majeſty's Reign, at or near the Latitude of Seven, South Latitude, on the Coaſt of *Braſil*, at or near Cape St. *Auguſtine*, by Force and Arms, upon the High Sea (within the Juriſdiction of the Admiralty of *England*), piratically and felonioufly did ſurprize, ſeize, and take a ſmall Fiſhing Veſſel, (having *Portugueſe* Men on board) and belonging to the Subjects of the King of *Portugal*, (Her Majeſty's good Ally) and out of her, then and there, within the Juriſdiction aforeſaid, felonioufly and piratically did, by Force and Arms, take and carry away a Quantity of Fiſh and Salt to the Value of three Pounds.

II. That you, the ſaid *John Quelch*, with divers others, on or about the Eighteenth Day of *November*, 1703, in the Second Year of Her ſaid Majeſty's Reign, in or near the Latitude of Eight South, near Cape St. *Auguſtine* aforeſaid, by Force and Arms, upon the High Sea, (within the Juriſdiction of the Admiralty of *England* aforeſaid) piratically and felonioufly did ſurprize, ſeize, and take a ſmall Brigantine, of the Burthen of about Fifteen Tons, (having *Portugueſe* Men on board) and belonging to the Subjects of the King of *Portugal*, (Her Majeſty's good Ally) bound for *Parenebuck*; and out of her, then and there, within the aforeſaid Juriſdiction, felonioufly and piratically did, by Force and Arms, take and carry away Five Cheſts of *Braſil* Sugar, to the Value of One Hundred and Fifty Pounds, Six Barrels of Molaſſes, to the Value of Six Pounds.

III. That you, the ſaid *John Quelch*, with divers others, on or about the Twenty-fourth Day of *November*, 1703, in the Second Year of Her Majeſty's Reign, at or near the Latitude of Nine South, near Cape St. *Auguſtine* aforeſaid, by Force and Arms, upon the High Sea, (within the Juriſdiction of the Admiralty of *England* aforeſaid) piratically and felonioufly did ſurprize, ſeize, and take a ſmall Brigantine, of the Burthen of about Forty Tons, (having *Portugueſe* Men on board) and belonging to the Subjects of the King of *Portugal*, (Her Majeſty's good Ally) bound for *Parenebuck*; and out of her, then and there, within the Juriſdiction aforeſaid, felonioufly and piratically did, by Force and Arms, take and carry away five Cheſts of *Braſil* Sugar, to the Value of One Hundred and Fifty Pounds, a Quantity of Molaſſes, Rice, and Farine, to the Value of Ten Pounds.

IV. That you, the ſaid *John Quelch*, with divers others, on the Fifth Day of *December*, 1703, in the Second Year of Her Majeſty's Reign, at or near the Latitude of Thirteen South Latitude, off of *Mora*, by Force and Arms, upon the High Sea, (within the Juriſdiction of the Admiralty of *England* aforeſaid) piratically and felonioufly did ſurprize, ſeize, and take a ſmall *Portugeuſe* Shallop, navigated by, and belonging to the Subjects of the King of *Portugal*, (Her Majeſty's good Ally) and out of her, then and there, within the Juriſdiction aforeſaid, felonioufly and piratically did, by Force and Arms, take and carry away a Quantity of Earthen-ware, Value Five Shillings, Two Jars of Rum, Value Ten Shillings, a Quantity of Linen Cloth, Value Ten Shillings.

V. That you, the ſaid *John Quelch*, with divers others, on the ſaid Fifth Day of *December*, 1703, in the Second Year of Her Majeſty's Reign, at or near the Latitude of Thirteen South, off or near *Mora* aforeſaid, by Force and Arms, upon the High Sea (within the Juriſdiction of the Admiralty of *England*), piratically and felonioufly did ſurprize, ſeize, and take a *Portugueſe* Boat, navigated by, and belonging to the Subjects of the King of *Portugal*, (Her Majeſty's good Ally) and out of her, then and there, within the Juriſdiction aforeſaid, felonioufly and piratically did by Force and Arms, take and carry away ſome Pieces of Cloth, Value Five Shillings, Two Pieces of Silk, Value Twenty Pounds, and ſunk the ſaid Boat, Value of Thirty Pounds.

VI. That you, the ſaid *John Quelch*, with divers others on the Ninth Day of *December*, 1703, in the Second Year of Her Majeſty's Reign, at or near the Latitude of Thirteen South, off of *Mora* aforeſaid by Force and Arms, upon the High Sea, (within the Juriſdiction of the Admiralty of *England* aforeſaid) piratically and felonioufly did ſurprize, ſeize, and take a *Portugueſe* Brigantine, Burthen about Twenty Tons, and an open Boat navigated by, and belonging to the Subjects of the King of *Portugal*, (Her Majeſty's good Ally) and out of them, then and there, within the Juriſdiction aforeſaid, felonioufly and piratically did, by Force and Arms, take about Fifty Pounds in *Portugueſe* coined Money, a Negro Boy, Value Twenty Pounds, ſome Rice and Farine, Value Five Shillings.

VII. That you, the ſaid *John Quelch*, with divers others, on the Twentieth Day of *December*, 1703, in the Second Year of Her Majeſty's Reign, at or near the Latitude of Twenty-three and Forty Minutes South, upon the Coaſt of *Braſil*, near the Iſland of *Grandee*, by Force and Arms, upon the High Sea, (within the Juriſdiction of the Admiralty of *England*) piratically and felonioufly did ſurprize, ſeize, and take a ſmall *Portugueſe* Brigantine, Burthen about Twenty-five Tons, navigated by, and belonging unto the Subjects of the King of *Portugal*, (Her Majeſty's good Ally) and out of her, then and there, within the Juriſdiction aforeſaid, felonioufly and piratically did, by Force and Arms, take and carry away Five Cheſts of *Braſil* Sugar, Value One Hundred and Fifty Pounds, and a ſmall Parcel of *Portugueſe* Money, ſome Gold and Silver, Value Fifty Pounds.

VIII. That

VIII. That you, the ſaid *John Quelch*, with divers others, on the Fifteenth Day of *January*, 1703, in the Second Year of Her Majeſty's Reign, at or near the Latitude of Twenty-four South, upon the Coaſt of *Braſil*, by Force and Arms, upon the High Sea, (within the Juriſdiction of the Admiralty of *England*) piratically and feloniouſly did ſurprize, ſeize, and take a *Portugueſe* Brigantine, burthen about Thirty-five Tons; ſhe came from *Spirito Sancto*, bound for *Rigineer*, navigated with, and belonging to the Subjects of the King of *Portugal*, (Her Majeſty's good Ally) and out her, then and there, within the Juriſdiction aforeſaid, feloniouſly and piratically, by Force and Arms, did take and carry away One Hundred Weight of Gold Duſt, Value Six Thouſand Pounds, and Nine Hundred Pieces of coined Gold, Value Nine Hundred Pounds.

IX. That you the ſaid *John Quelch*, with divers others, on the Seventeenth Day of *February*, 1703, in the Second Year of her Majeſty's Reign, at or near the Latitude of Thirty-five and Fifty Minutes, near the River of *Plate*, by Force and Arms, upon the High Sea, (within the Juriſdiction of the Admiralty of *England* aforeſaid) piratically and feloniouſly did ſurprize, ſeize, and take a *Portugueſe* Ship, burthen about Two Hundred Tons, Twelve Guns, loaden with Hides and Tallow, bound to *Bayes*, navigated with, and belonging unto the Subjects of the King of *Portugal*, (Her Majeſty's good Ally) and then and there, within the Juriſdiction aforeſaid, did feloniouſly kill and murder the Commander thereof, and wounded ſeveral others, and out of her piratically, by Force and Arms, did take and carry away Twelve Barrels, and a Pipe of Beef, Value Ten Pounds; Four great Guns, Value Twenty Pounds; Four Patteraro's Value Forty Shillings; Twelve ſmall Arms, Value Six Pounds; One Hundred Weight of Shot, Value Three Pounds; Two Barrels of Powder, Value Twelve Pounds; a new Main-ſail, Fore-ſail and Foretop-ſail, Value Forty Pounds; a Negro Boy, Value Forty Pounds; and about Two Hundred Pieces of Eight, *Spaniſh* Money, contrary to the Statutes in that Caſe made and provided.

Upon which Articles, *Mutatis Mutandis*, *Matthew Pimer*, *John Clifford*, and *James Parrot*, being arraign'd, ſeverally pleaded Guilty.

Ordered, That *Matthew Pimer*, *John Clifford*, and *James Parrot*, be received into the Queen's Mercy, and be declared Witneſſes in Behalf of the Queen, againſt *John Quelch* and Company, for their ſeveral Piracies, Robberies, and Murder.

Ordered, That *Matthew Pimer*, *John Clifford*, and *James Parrot*, ſtand within the Bar, and be ſworn as Witneſſes on Her Majeſty's Behalf.

Ordered, That Captain *John Quelch* be brought to the Bar, where being brought, he was arraign'd upon the ſeveral foregoing Articles of Piracy, *&c.* to which the ſaid *John Quelch* pleaded, Not Guilty, but moved for Time to prepare for his Trial.

Ordered, That Time be given him 'till *Friday* Morning next, at Nine of the Clock.

The Priſoner alſo moved, to know whether he he might not have Counſel allow'd him, upon any Matter of Law that might happen upon his Trial.

Curia. The Articles upon which you are arraign'd are plain Matters of Fact; however, that you may have no Reaſon to complain of Hardſhip, Mr. *James Meinzies*, Attorney at Law, may aſſiſt you, and offer any Matter of Law in your Behalf upon your Trial.

Ordered, That the Priſoner at the Bar have a Copy of the Articles exhibited againſt him; and then he was remanded to Priſon.

Ordered, That a Minute be made, that it is declared by *Pimer*, *Clifford*, and *Parrot*, that *James Thurbar*, of *Swanſey*, was not of the Company belonging to the Brigantine *Charles*, though named in the firſt Articles for the Voyage.

Ordered, That *John Lambert*, *John Miller*, *William Wilde*, *Benjamin Perkins*, *Chriſtopher Scudamore*, *James Auſtin*, *John Dorothy*, *Nicholas Richardſon*, *Richard Lawrence*, *John Templeton*, *John Pitman*, *Charles James*, *William Jones*, *Eraſmus Peterſon*, *John King*, *Francis King*, *Charles King*, *Peter Roach*, *Dennis Carter*, and *John Carter* be brought to the Bar; who being placed at the Bar, were ſeverally arraign'd upon the Articles of Piracy, Robbery, and Murder, before-mention'd, *Mutatis Mutandis:* To which they ſeverally pleaded, Not Guilty, and then moved for Counſel, and Time to prepare for their Trial.

Ordered, That Mr. *Meinzies* aſſiſt the Priſoners in any Matters of Law, and that the Priſoners prepare for their Trial on *Friday* next, at Nine o'Clock in the Morning: And then the Court adjourn'd till *Friday* Morning.

Friday, *June* 16th.

Proclamation being made, the Court was opened, and Captain *Quelch* being brought to the Bar, preſented a Petition in Behalf of himſelf, and the reſt of the Priſoners, praying for further Time.

Ordered, That the Priſoners be allowed Time till *Monday* Morning next at Nine o'Clock, and then peremptorily to come upon their Trials; A Motion was alſo made by the Priſoners Counſel, that the Queen's Witneſſes might be kept aſunder till the Priſoners came upon their Trials; to which it was anſwered by the Counſel for the Queen, that though in Caſes of High Treaſon, and ſome other Caſes, the Priſoners have been ſo far favoured, as that upon their Trials, Approvers, or other Evidences for the Crown have been kept out of hearing of one another while they were giving their ſeveral Evidences, yet to ſeparate them before their Trials, was without Precedent; upon which the Court deny'd the Motion of the Priſoners Counſel in that Matter; but directed that at their Examination at the Bar they ſhould be ſeparate. Then the Court adjourn'd till *Monday* Morning, Nine o'Clock.

Monday, the 19th of *June*, 1704, at Ten o'Clock in the Morning.

The Court being opened, and Capt. *Quelch* ſet to the Bar.

Ordered, That his Irons be taken off during his Trial.

Mr. Newton, *of Council for the Queen.* May it pleaſe your Excellency, and the Honourable Commiſſioners of this Court; The Priſoner at the Bar ſtands charged, for that he, the ſaid *John Quelch*, late of *Boſton*, in the Province of the *Maſſachuſetts-Bay*, &c. Mariner, Lieutenant of the Brigantine *Charles*, whereof *Daniel Plowman*, Mariner, deceaſed, was late Commander, notwithſtanding the ſaid Brigantine, *&c.* Which Articles when we have prov'd upon the Priſoner at the Bar, we doubt not but your Excellency, and the reſt of the Honourable Commiſſioners of this Court will do him, our Nation, and the World that Juſtice, as to condemn and puniſh him for the ſame.

Paul Dudley, Eſq. *Attorney-General, and Her Majeſty's Advocate for the Court of Admiralty.* May it pleaſe your Excellency, and the reſt of the Honourable Commiſſioners of this Court: The Priſoner at the Bar, ſtands articled againſt for, and charged with ſeveral Piracies, Robberies and Murder, committed by himſelf and Company, upon the High Sea (upon the Subjects of the King of *Portugal*, Her Majeſty's good Ally), the worſt and moſt intolerable of Crimes that can be committed by Men. A Pirate was therefore juſtly called by the *Romans*, *Hoſtis Humani Generis:* And the Civil Law ſaith of them, that neither Faith nor Oath is to be kept with them; and therefore if a Man that is a Priſoner to Pirates, for the Sake of his Liberty promiſe a Ranſom, he is under no Obligation to make good his Promiſe; for Pirates are not entitled to Law, not ſo much as the Law of Arms: For which Reaſon 'tis ſaid, if Piracy be committed upon the Ocean, and the Pirates in the Attempt happen to be overcome, the Captors are not obliged to bring them to any Port, but may expoſe them immediately to Puniſhment, by hanging them at the Main-yard; a Sign of its being of a verry different and worſe Nature than any Crime committed upon the Land; for Robbers and Murderers, and even Traytors themſelves, may not be put to Death without paſſing a formal Trial: And if the Fate of the Priſoner at the Bar, with his Company, had allowed them to have been overcome in their Piracies, *&c.* and immediately hung up before the Sun, it had been very juſt upon them. But being then ſuffered to live, and now brought unto a Court of Juſtice, they are to be uſed, treated, and tried, as the Laws of *England*, and our own Country do direct. Hereupon I muſt obſerve, that until the Statute of the 28th of *Henry* the Eighth, all Piracies, Robberies and Murder committed upon the Sea, were Tried before the Admiral, his Lieutenant, or Commiſſary, after the Courſe of the Civil Law; the Nature whereof was, that before any Judgment of Death could be given againſt the Offenders, either they muſt plainly confeſs their Offences (which they will never do without Torture), or elſe their Offences be ſo plainly and directly proved by Witneſſes indifferent, ſuch as ſaw their Offences committed, which was next to impoſſible to be had, therefore that Statute enacted, That the ſaid Crimes ſhould be Triable in any County in *England*, by ſuch and ſuch Commiſſioners, and the Trial to be according to the Courſe of the Common Law: This Act continues in *England* in Force to this Day; and 'till very lately ſerv'd for all Piracies that were committed in the Plantations, or any Parts beyond the Seas. For *Kidd*, the laſt Pirate that went from this Country, was try'd upon that Statute; but it proving very troubleſome and chargeable to tranſport Pirates and the Witneſſes from the ſeveral Plantations, there was another Act of Parliament made in the 11th and 12th Years of the late King WILLIAM, that provides principally and particularly for the Trial of all Pirates that are ſeiz'd in any of the Plantations. It is by virtue of this Act of Parliament, and a Commiſſion purſuant thereto, that your Excellency, and this Honourable Court, are now ſitting in Judgment upon the Priſoner at the Bar, and his vile Accomplices; and though it may be thought by ſome a pretty ſevere thing to put an *Engliſhman* to Death without a Jury, yet it muſt be remembered, that the Wiſdom and Juſtice of our Nation, for very ſufficient and excellent Reaſons, have ſo ordered it in the Caſe of Piracy; a Crime which, as I before obſerv'd, ſcarce deſerves any Law at all: Beſides, the late Statute hath appointed ſuch Commiſſioners, as will take Care to do equal Juſtice to the Priſoner on the one Hand, and to the Crown and Allies of *England* on the other. The *Engliſh* Word *Pirate*, is derived from a Word that ſignifies *Roving*; for Pirates, like Beaſts of Prey, are ſeeking and hunting upon the Ocean, for the Eſtates, and ſometimes the Lives of the innocent Merchant and Mariner: His Character and Deſcription is thus; A Pirate is one who, to enrich himſelf, either by Surprize, or open Force, ſets upon Merchants and others trading by Sea, to ſpoil them of their Goods or Treaſure, and oftentimes ſinking their Veſſels, and bereaving them of their Lives: And 'tis no wonder if Piracy be reckon'd a much greater and more pernicious Crime than Robbery upon the Land, becauſe the Conſideration of the General Navigation, and Commerce of Nations, is far beyond any Man's particular Property: Beſides, whereas Robbery upon the Land is moſt commonly from particular Perſons; Piracy is from many, and oftner attended with the Death of others: Thus it was in the Caſe now to be tried; one of the Captains of one of the *Portugueſe* Veſſels being unfortunately, if not baſely kill'd and murder'd in the Action. But before we proceed to the ſeveral Articles upon which the Priſoner is to be tried, I beg Leave a little to ſet forth the aggravating Circumſtances of the Crimes committed by theſe vile Men: And to begin with their Mutiny, their rebellious, inhuman, I wiſh I might not ſay, their murderous Uſage of their worthy Commander, Captain *Plowman*; God knows how far their Treatment of him might haſten his End; however, that muſt be anſwered for at a higher Tribunal. The next Thing I would obſerve in this Matter, is their Commiſſion which they obtain'd from Her Majeſty's Government of this Province, a Sword to fight the open and declared Enemies of Her Sacred Majeſty; but, inſtead of drawing it againſt the *French* and *Spaniards*, they have ſheathed it in the Bowels of ſome of the beſt Friends and Allies of the Crown of *England* at this Day; the *Portugueſe* being Confederate with Her Sacred Majeſty againſt the *French* and *Spaniards*, for the Peace, Rights, and Liberties of *Europe:* This was the Baſeneſs, the Treachery, and Cowardice of this Matter, that inſtead of fighting for Honour with the *French*, or Money with the *Spaniards*, they muſt go and ſurprize a few

few honeſt and peaceable Men, and our good Friends, in their lawful Occaſions, that neither thought, nor meant any Harm: Thus a Man falls before wicked Men. The third Thing I would obſerve, is the perfidious Impudence of theſe Men, for as they ſail'd along the Coaſt of *Braſil*, they put in at one or two Places, and aſſured the *Portugueſe* of their Friendſhip and Kindneſs; that their Deſigns were againſt the *French* and *Spaniard*; and yet at the very next Port, a few Leagues diſtant, they robbed and plundered ſome of the Neighbours and Friends of thoſe they had ſeen the Day before. The fourth and laſt Thing that I would mention is the Number of their Crimes; for it was not once, twice, nor thrice, that would ſerve their Turns, but they go on in the Repetition of their Wickedneſs, till they were glutted, and thought they had enough of it: And as to the Priſoner now at the Bar, as his Share in juſt and lawful Prizes would have been at leaſt double to any other, ſo no doubt but the ſame Meaſure will be of his Guilt in all this Matter: We ſhall now, may it pleaſe this honourable Court, proceed to prove the ſeveral Articles charged upon the Priſoner; and our Proof will be partly Preſumptive, partly Circumſtantial, and partly Poſitive and Downright: The Preſumptive Part of the Proof is the Manner of their coming to this Place, being in that Sort as renders them ſuſpicious to every Body; but eſpecially I would obſerve their not being able to give any tolerable Account from whence they came, or had their Treaſure. This was what induced their Owners to give an Information to the Government of the Matter; and our own Law in this Country againſt Piracies, is very plain in this Point of Preſumption.

The ſecond Proof that we ſhall offer, will be what we call Circumſtantial; and indeed the Circumſtances of this Matter are ſo many, that render it undoubted, but that the Priſoner, with his Company, have been guilty of the Articles charged upon him.

Then in the third Place, there is that which we call poſitive and downright Proof, *viz.* the Confeſſion and Evidences of their Accomplices, who are now the Queen's Witneſſes.

Mr. *John Colman* and Mr. *William Clark* were ſworn to give Evidence, *&c.* and then produced Captain *Daniel Plowman*'s Commiſſion, which was read, as alſo his Inſtructions, and then his Owners Orders; as alſo the ſaid *Plowman*'s Letters from *Marblehead* to his Owners; then a Copy of the Owners Letter was read, which they ſent to the ſeveral Iſlands, with his Excellency's Letter to the ſeveral Governors, *&c.*

Mr. *Colman* made Oath to their being true Copies of their Originals: After this, Mr. *Clark* brought into Court ſeveral long Spadha's, a *Portugueſe* Enſign, two Skins full of Sugar, upon one of which was a Direction, and it being thought to be in *Portugueſe*, *Edward Lyde*, Eſq. and Mr. *Samuel Frazon*, being Sworn Interpreters, acquainted the Court that *that* Skin of Sugar was directed to a Perſon in *Liſbon*; adding withal, that if it had been *Spaniſh*, it would have been *al Signior*, whereas it was *Para*, &c. Whereupon the Skins were opened, and full of what was adjudged to be *Braſil* Sugar.

Mr. *Lyde* alſo making Oath, that having been at *Maderas*, he had ſeen ſeveral Hundreds of thoſe *Seroins*, or Skins of Sugar ſent from *Braſil*, and that he verily believed, that what was now produced was *Braſil* Sugar.

The Enſign, or Colours, were expoſed alſo in Court, and plainly ſeen to be *Portugueſe*; and Mr. *John Colman* and Mr. *William Clark* made Oath, That the Spadha's, Skins, Enſign, and other Things, were taken out of the Brigantine *Charles*, ſince her Arrival here.

Mr. *John Noyes*, Goldſmith, alſo was ſworn, and made Oath, That he had received of the Priſoner at the Bar, ſince his Arrival in the Brigantine *Charles*, a conſiderable Quantity of Coined Silver Money, and ſaw many of the Pieces to be *Portugal* Money, and judged the reſt to be ſo too, but he cannot ſwear it, the Priſoner at the Bar being then in his Shop, and melting them down himſelf.

After this, *Mr. Treaſurer*, with his Deputy, came in with a Bag of Gold and Treaſure brought in the Brigantine *Charles*, which being ſeized, was committed to the Cuſtody of the Treaſurer of the Province and others, by Order of the Governor and Council.

Mr. *Jeremiah Allen* being ſworn, depoſed, That the Bag he had now in Court contained the Treaſure that was committed to the Treaſurer and others.

Ordered, That Mr. *Colman*'s Parcel of Gold be opened, who being aſked whence he had that Gold? made Anſwer, That he received that, and all the reſt of the Owners Shares, from the Priſoner at the Bar: Upon viewing the coined Gold, they were all found *Portugueſe* Gold, and ſeveral of the Pieces were found to be coined in 1703. Upon this the Preſident obſerved, that the Money being coined ſo lately, it was very improbable it ſhould ever have been out of *Portugueſe* Hands, Inhabitants of *Braſil*.

After this, ſome Prints that came in the Brigantine *Charles* were examined, and found to be in the *Portugueſe* Language.

After this, a young Negro Boy, brought in by the Priſoner at the Bar, and Company, was ſet up by Order of the Court, was examined, and the Interpreters acquainted the Court that he was a baptized Negro, his Name *Joachim*; that he lived with a *Portugueſe*, his Maſter's Name *Joſepho Galeno*; that he lived in the Bay of *All-Saints*, in *Braſil*; that he was taken by an *Engliſh* Brigantine, and that the Priſoner at the Bar was then on board the Brigantine that took him; and that when he was taken, he was pretty near the Land in an open Boat, with Fiſh and other Things in it; and that there were two *Portugueſe* Men in the Boat at the ſame Time.

After this, the Court ordered the Interpreters to try the Negro Boy by *Spaniſh* and *French* Queſtions: But it was found he underſtood neither.

Queen's Counſel. May it pleaſe your Excellency, and the reſt of the Honourable Commiſſioners, we ſhall now proceed to an higher Proof of this Matter, by examining thoſe that have been allowed to be the Queen's Evidence againſt the Priſoner at the Bar, and the reſt of his Company.

We ſhall begin with *Matthew Pimer*, a ſkilful Mariner, who was ſhipped by Captain *Plowman* himſelf, to go againſt the *French*, &c.

Ordered, That *Pimer* be ſworn, the other two Witneſſes removed out of hearing. Upon this, *Pimer*'s Examination was read, which he ſwore to the Truth of.

Preſident. What Reaſon had you to believe they were *Portugueſe* that you robbed? Can you ſpeak, or underſtand *Portugueſe?*

Pimer. No, Sir; I do not underſtand the Language, but believe them all to be *Portugueſe*, becauſe we took them upon the Coaſt of *Braſil*; their Lading and Enſigns made me conclude they were *Portugueſe*.

Queen's Counſel. If your Excellency pleaſe, we will examine the Witneſs upon each of the Articles and Matters the Priſoner at the Bar is charged with; but before we come to the Articles, we will examine him as to the Priſoner's Behaviour towards Captain *Plowman*.

Pimer. *Anthony Holding* was the Man that bolted the Door upon the Captain, the Priſoner was then on Shore, but came on board that Night, and reſolved to go to Sea, and after the Captain's Death took the Command of the Brigantine.

Queen's Counſel. If your Excellency pleaſe, we will now read the firſt Article of Piracy, and ſee what the Witneſs can ſay to it: Which being read.

Pimer. There were five *Portugueſe* on board that Veſſel.

Queſt. Was the Priſoner then in the Command of the Brigantine?

Pimer. Anſ. The Priſoner was Commander of the Brigantine during the whole Voyage.

Queſt. Did none of them you took, aſk the Reaſon why you took them?

Anſ. No, not that I know of; our Interpreter, *John Twiſt*, had a great deal of Diſcourſe with the Men we had taken, and ſaid they were *Portugueſe* that were taken now, and ſo afterwards: This firſt Veſſel was a ſmall Fiſhing-Veſſel, out of which we took ſome Fiſh and Salt.

Art. 2. *Queſt.* What do you know as to the ſecond Article?

Anſ. I remember the taking of that Brigantine, much in the ſame Latitude with the other, but nearer the Land; three white Men, and two Negroes were on board of her. This Brigantine had ſome *Braſil* Sugar and Molaſſes, two white Men and a Negro entered themſelves to go with us, our Interpreter telling them we intended for the River of *Plate*, and to take the *Spaniards*; but afterwards as we took Prizes, the two white Men hid themſelves, that their Countrymen might not ſee them.

Art. 3. *Queſt.* as before.

Pimer. I remember the taking of that Veſſel, the Priſoner was then our Commander, and went on board of her himſelf, ſhe was taken in Sight of Land, and bound to *Parnebuck*.

Queſt. Did not theſe People ſeem very much troubled that you ſhould take them, you being *Engliſhmen*, and at Peace with them?

Anſw. They were told, to the beſt of my Knowledge, that we were *Frenchmen*.

Art. 4. *Queſt.* as before.

Anſ. I remember the taking of this Earthen-Ware Veſſel within three Leagues of the Shore, ſhe had three Men on board her, came from *Bayes*, and bound to ſome Neighbouring Port; we gave the Men their Boat again, and they went to *Bayes*, the Priſoner was then on board the Tender that took her.

Queſt. What Tenders do you mean?

Anſ. We made uſe of one or two of the firſt Veſſels; we took and put ſome of our Men on board of her, and kept her the greateſt Part of the Voyage.

5. *Article* read, and *Pimer* being aſk'd, ſaith, He remembers the taking of this Boat within three Leagues of the Land, ſaw the Flag of the Caſtle at that Time ſhe was taken by the Tender, *Quelch* and about Twenty-four of our Men on board her; we took two Prizes this Day; the Boat we took at this Time was ſtaved by ſome of the Company, as they told me, and afterwards ſunk, the Men we took on board the Boat were all *Portugueſe*, to the beſt of my Knowledge.

Article 6. being read, *Pimer* being aſked, ſaith, That this Veſſel was taken with the Tender, and *Quelch* on board her; the Negro Boy *Joachim* was taken out of this Veſſel, and about Fifty Pounds in Money. The ſaid Negro Boy being now examined, ſaith, there was a young Man on board that had ſome Money, and that it was in a ſmall Canvas Bag.

Pimer. 'Twas a Canvas Bag, to the beſt of my Knowledge; there was ſome Rice and Farine, which we took out of her, and then let the Men go away with their Veſſel after we had pillaged it.

Article 7. read. *Pimer.* This Veſſel was taken near the *Tropick* by *Quelch* in the Tender; but I was then on board the Brigantine *Charles*, the Quarter-Maſter had the Money that was taken out of her, being ſome coined Gold and ſome Silver; this Veſſel was taken very near the Shore, about two Leagues from the Place whence ſhe came, and was bound to *Regineer*. I ſaw her when they brought her out of the Road, there was but one white Man on board her, he ſaid he was a *Dutchman*, and afterwards of *Jutland:* Becauſe the Captain would not give him a Share equal with the reſt, he threatened he would inform againſt them; whereupon the major Part ordered him to be ſent on Shore, giving him a Gun, and ſome Powder and Shot; he could ſpeak *Portugueſe* very well: This Veſſel was taken near the Iſland of *Grandee*.

Article 8. read. *Pimer.* I was in the Boat that took the Gold Brigantine, and commanded to do it by the Captain's Order; we had found ſome of the Gold before the Captain came on board; he took the Gold, and carried it himſelf on board the Brigantine *Charles:* I ſaw it weighed about three Days after: I ſaw the coined Gold taken, it had a late Date, ſome a Year or two ſtanding. The Veſſel came from *Spirito Sancto*, was taken within two Miles of the Land, and under Sail, had on board fourteen Men, all Whites, two Women of good Faſhion: There were ten Hands in the Boat with me when we took her; there was nobody on board her could ſpeak any Language I underſtood: We kept them on board our Brigantine till next Day, and then gave them their Brigantine again.

Article 9. *Pimer.* This Ship was taken by our Brigantine *Charles*, the Priſoner at the Bar, then our Commander, being on Board; the River of *Plate* was there ſix or ſeven Leagues over: We gave her Chace about two Days, ſhe fired three Guns at us before ſhe put out her

Colours, which were *Portugueſe*; her Enſigns was not up till within Half an Hour before ſhe was taken; I was not on board her, but Captain *Quelch* was, though many of our Men had entered her before he did; ſhe had about thirty-five Men and twelve Guns: When this Ship fired upon us, we had *Engliſh* Colours flying; we kept the Ship for ſome Time, and took out of her what is ſet forth in the *Ninth Article*. This Ship came from a *Portugueſe* Caſtle, had been out about twenty-four Hours, and was bound for *Bayes*.

Preſident. Set up the Negro Boy who was taken in this Ship; which being done, and examined by the Interpreters, ſaith his Name is *Emanuel*; that he was baptized; lived in the River of *Plate*; his Maſter's Name was *Baſtian*; was a *Portugueſe*, and Captain of the Ship that was taken by the Brigantine, in the River of *Plate*; that he ſaw one of *Quelch*'s Company ſhoot his Maſter with a Piſtol; that his Maſter died immediately of that Wound; that he heard ſay the Words, *Kill him:* Says, that there were no more Men kill'd on board beſides his Maſter, only two wounded: Adds, that his dead Maſter was thrown over-board immediately after his Death; and ſays, that he ſaw the Priſoner at the Bar come on board the *Portugueſe* Ship, arm'd with a Cutlaſs and two Piſtols.

After this, the Interpreters were directed to examine both the Negro Boys, what their new Maſters bid them ſay of themſelves when they came to *New-England*; to which the Negro Boys made Anſwer, That their Maſters bid them ſay, they were not *Portugueſe*, but *Spaniſh* Negro Boys.

Curia. Pimer, Have you any thing further to offer to the Court relating to the Priſoner?

Pimer. When we came about the Latitude of *Bermuda*, the Company ordered my Journal to be taken from me, leſt I had writ ſomething that might do them Damage; and refuſing to tear out myſelf what Captain *Quelch* would have had me, he tore it out himſelf, about five or ſix Leaves, from *October*, to *February* 20, that they committed their Piracies. Captain *Quelch* made a Speech, telling them, What they ſhould ſay when they came on Shore; as that we had met with ſome *Indians*, who had got great Treaſure out of a Wreck, of whom we had our Gold; and whereas we never had any Gold from any *Indians*, it being but once that any of them were on board of us, and then we did not trade with them. It being now late, the Court adjourn'd till Four o'Clock in the Afternoon.

Monday, Four o'Clock in the Afternoon: *Clifford*, the ſecond Witneſs, was ſworn, and *Parrot* removed out of hearing.

Preſ. You are now to acquaint Her Majeſty's Commiſſioners of this Court, of what you know relating to the Priſoner at the Bar, his being Guilty of what he is charged with in thoſe Articles which you have heard read.

Clifford. Yes, Sir, I ſhall; and I will begin with the bolting the Door upon our Captain *Plowman*. *Peter Roach*, one of the Company, kept the Door by Order of *Anthony Holding*, and ſome others that roſe up to run away with the Veſſel. The Priſoner at the Bar was then on Shore, but when he came on board, did not object againſt what was done, or what they were intending to do: *Quelch* then at that Time had ſome Command, but *Holding* was the Ringleader, and had the Majority of the Crew on his Side. *Pimer* and myſelf offered to go to the Captain, but the Centinel, that guarded the Door with a Sword in his Hand, would not let us.

Preſ. Let the Articles be read, and let the Evidence ſay what he can to each of them.

Art. 1. read. *Clifford*. The firſt Prize that we took any thing out of, was a Fiſhing-Boat, out of whom we took ſome Fiſh and ſome Salt, near *Parnebuck*, and that which induced me to think it was a *Portugueſe* Veſſel, was, becauſe 'twas taken near their own Shore: But I do not underſtand the *Portugueſe* Language.

Art. 2. read. *Clifford*. This was the Second Veſſel we took, a Brigantine that we carried with us during the Voyage, *Quelch* was then our Commander, and went on board the ſaid Veſſel himſelf.

Art. 3. read. *Clifford*. I remember well the taking of this Veſſel by *Quelch* himſelf; we carried a Pilot along with us, who told us they were *Portugueſe*. *John Twiſs*, who is ſince dead, was the Linguiſter's Name. One of the Priſoners, who was firſt taken, underſtood a little *Engliſh* by this Time, and then aſk'd what was the Reaſon that we, being *Engliſh*, took the *Portugueſe*. And one of our Men, named *Iſaac Johnſon*, the *Dutchman*, was whipt, for telling them we were *Engliſh*.

Art. 4. read. *Clifford*. I remember the taking this Veſſel very well, ſhe was taken by one of the Prize Veſſels; I ſaw the Earthen-ware that was taken; we were all along, during the Captions, in Sight of the Shore, and near *Mora*.

Art. 5. read. *Clifford*. I remember the taking of this Boat by Captain *Quelch*; the Men that we took were *Portugueſe*, as we were told by our Interpreter. I do not remember any of the Veſſels we had yet taken had Colours.

Art. 6. read. *Clifford*. I ſaw the Bag of Money, but cannot tell how much there was of it. The Negro Boy, *Cuffee*, was then taken; at firſt he waited on the whole Ship's Crew, but then was ſold at the Maſt to *Benjamin Perkins:* This Veſſel was taken by a Tender, with about Fifty Pounds, all white Money.

Art. 7. read. *Clifford*. I remember this Veſſel was taken by our Tender, near the Iſland of *Grandee*; I ſaw the Sugar brought on board (the Brigantine *Charles*) and ſome of the Gold; there was only one *Dutchman* in this Veſſel, who enter'd himſelf with us for the Voyage. But becauſe the Company voted he ſhould not have a full Share, he threaten'd, when he came on Shore, what he would diſcover; upon which they voted him to be put on Shore, Captain *Quelch* being preſent at their Vote.

Art. 8. read. *Clifford*. I was not in the Boat that took this Brigantine: I ſaw the Hundred Pound Weight of Gold Duſt on board the Brigantine *Charles*, which Capt. *Quelch* ſhared among us. There might be about Fifteen or Sixteen Men, with Two Women, on board the Brigantine that was taken, ſhe came from *Spirito Sancto*, and was bound for *Rivo de Januero*, ſhe was taken by our own Pinnace, with half a Score Men, the Priſoner not in it.

Art. 9. read. *Clifford*. I was on board this Ship when ſhe was taken, and ſo was the Priſoner at the Bar. It was thought the Captain of her was wounded before we boarded her; but there was ſome Diſpute among the Men, which of them it was killed him; Capt. *Quelch* commanded the Brigantine when we took her. We took Ten of Twelve Barrels, and a Pipe of Beef in her, and ſundry other Things. I ſaw ſuch an Enſign as that which was ſhewn in Court in the Forenoon, on board the Ship. We took alſo that Negro Boy, who was in the Court in the Forenoon.

Then *Clifford* was ſet by, and *Parrot*, the third Witneſs for the Queen, was brought in.

Preſ. Parrot, You are now to give an Account to Her Majeſty's Commiſſioners of this Court, of what you know relating to the Priſoner at the Bar, his being guilty of what he is charged with, in thoſe Articles which you have heard read.

Parrot. I can ſay nothing as to the Priſoner's Carriage towards Capt. *Plowman*, but the Cabbin Door was bolted upon him, and I believe, was a contriv'd Thing before we went off of the Land; the Priſoner at the Bar was not on board 'till Night. When the Captain was thrown over-board, then he took upon him the Command, and order'd us to ſail to Sea.

Art. 1. read. *Parrot*. We were not in Sight of Land, but believe the Veſſel to be *Portugueſe*, being upon the *Braſil* Coaſt.

Art. 2. read. *Parrot*. I ſaw the Captain of this Veſſel, which was a Brigantine; ſhe was taken by the little Fiſhing Shallop, commanded by Capt. *Quelch:* I was afterwards on board her, and ſaw the Sugar brought on board the Brigantine *Charles*.

Art. 3. read. *Queſt.* Do you remember the Caption of this Veſſel?

Parrot. I remember it very well; Capt. *Quelch* was on board the Veſſel that took her; we kept her two or three Days.

Art. 4. read. *Queſt.* What do you know concerning the taking of this Veſſel?

Parrot. I remember the Veſſel with Earthen-ware; it was an open Veſſel, taken in Sight of Land. There was Molaſſes in the Pots; there were Men and Women on board her, whom we took on board the Brigantine *Charles*. We loſt the Boat's Rudder, ſo that ſhe could not ſail, wherefore we took her in Tow; and taking out what we had need of, we then ſunk her. Capt. *Quelch* and I were in the Brigantine that took this Veſſel.

Art. 5. read. *Queſt.* Do you remember the Caption of this Veſſel?

Anſ. Yes; I had ſome of the Silk taken in this Veſſel; ſo much as would make me a Pair of Breeches. We took all theſe Prizes after the firſt Fiſhing-Boat, in Sight of the Shore, as near as I can remember.

Art. 6. read. *Queſt.* as before.

Parrot. Anſ. I remember this Caption; the Priſoner at the Bar was at it; they were *Portugueſe* that were on board. I was put on board that Boat that *Cuffee* was taken out of; and out of that Boat I took about Twenty or Thirty Pounds of *Portugal* Money. She had Rice and Farine in her, which we took out of her.

Art. 7. read. *Queſt.* as before.

Parrot. Anſ. I believe this was the Brigantine we took at an Anchor before the Town. I went to fetch her myſelf; Capt. *Quelch* went over with us; we took Four or Five Cheſts of *Braſil* Sugar; all the Men had run away, and left the Brigantine, only one Man, who at firſt ſaid he was a *Dutchman*, but afterwards we found he was a *Jutlander*.

Art. 8. read. *Queſt.* as before.

Parrot. Anſ. Quelch did not take this Veſſel; ſhe was taken by our Boat, but I was not in the Boat that took her. Capt. *Quelch*, the Quarter-Maſter, and Carpenter, ſhared the Hundred Pound Weight of Gold Duſt among us.

Art. 9. read. *Queſt.* as before.

Parrot. Anſ. I was preſent at the Caption of this Ship: Capt. *Quelch* was the Commander of the Brigantine; we ſaw the ſaid Ship Two or Three Days before we took her. I ſaw the Colours, that were in Court To-day, firſt on board our Brigantine. We took Beef, Sails, Shot, Powder, four Guns, and an hundred Pieces of Eight, and odd; and a Negro Boy, whom one *George Norton* bought. The Captain was thrown over-board before I came on board; he was ſaid to be kill'd by *Scudamore*, our Cooper.

Preſ. Queſt. And was the Priſoner at the Bar Captain of your Brigantine during all this Time that you took theſe ſeveral Veſſels you have mention'd?

Parrot. Anſ. Yes; and a little before we came in, it was agreed that we ſhould ſay, we took our Gold out of a Veſſel, that ran aſhore about *Port Maranto*, but that the *Indians* were firſt at work upon her; *Anthony Holding* firſt called us upon Deck; *Pimer* told me, they had torn out Part of his Journal, and that they order'd every one to throw over-board whatever *Portugueſe* Prints they had.

Preſ Queſt. Pimer, or *Clifford*, have you any thing further to offer?

Clifford. Anſ. I ſaw the Captain take *Pimer*'s Journal out of his Hands, and order it to be torn out, and all *Portugueſe* Prints to be thrown over-board. We were all upon the Deck, when it was concluded we ſhould ſay, we had taken the Gold out of ſome Wreck that the *Indians* had acquainted us with.

Pimer. I ſaw the Man whipt, that told them the Brigantine belonged to *New-England*. The Captain and Quarter-Maſter order'd him to be whipt; *Anthony Holding* was the Man who whipt him. I was down below when the Agreement was made, what we ſhould ſay when we came aſhore, and was abuſed by *Peterſon* when I came upon Deck, becauſe I was not preſent.

Mr. *Newton*. May it pleaſe your Excellency, *&c.* We ſhall now (though there be no Neceſſity for it) prove, that long before, and at the Time that theſe ſeveral Piracies, *&c.* were committed, Her Sacred Majeſty and the King of *Portugal* were entered into a ſtrict Alliance, *&c.*

Upon this, Two *London* Gazettes, dated in the Months of *May* and *July*, 1703, were produced, and Two Paragraphs were read, *viz.*

Whitehall, May 24. The Treaty of Alliance, between the Emperor, Her Majeſty, the King of *Portugal*, and the States General, which has been ſo long talk'd of, was ſign'd at *Liſbon* the 16th Inſtant, *N. S.* and is brought hither by an Expreſs.

Whitehall, July 14. Yeſterday the Ratification of the Treaties, lately concluded at *Liſbon* with the King of *Portugal*, paſſed the Great Seal.

Preſ. Gentlemen of the Queen's Counſel, Have you now done on the Queen's Part?

Queen's Counſel. Yes, Sir; we have gone through the Courſe of the Queen's Evidence againſt the Priſoner at the Bar.

Preſident.

Preſident. Capt. *Quelch*, this Court is now ready to hear what you have to offer for yourſelf.

Quelch. My Counſel informs me, that he hath ſundry Matters of Law to offer to your Excellency on my Behalf.

Preſ. Mr. *Meinzies*, if you have any Matters of Law to offer in Behalf of the Priſoner at the Bar, we would hear it.

Mr. *Meinzies.* I have ſeveral Matters of Law to offer in Behalf of the Priſoner, *&c.* but before I mention them, I pray that I may not be thought any wiſe to juſtify or extenuate the horrible Crimes that are charged upon the Priſoner; for they are ſuch, that all the World muſt needs deteſt and abhor: But, as 'tis equal Juſtice to acquit the Innocent, as to condemn the Guilty; ſo, if the Evidence which has been produced againſt the Priſoner at the Bar, don't amount to make him guilty of the ſeveral Articles he ſtands charged with, this Court muſt needs acquit him.

The firſt Objection I make to the Evidence, is what was laſt produced, I mean the Gazettes.

Mr. *Newton.* The Gazette is publiſhed by Authority, and has been often allowed as good Evidence.

Preſ. The Streſs of this Matter does not lie upon the Alliance. Suppoſe they were not in Alliance with the Crown of *England*, yet if there was no War between the two Crowns, the Priſoner at the Bar, with his Company, had been guilty of Piracy. *Kidd* was hanged for robbing the Great *Mogul.*

Mr. *Meinzies.* But, may it pleaſe your Excellency, ſuppoſe we ſhould bring Proof, that the Gold Duſt imported in the Brigantine *Charles*, and now ſhewn in Court, to be *Spaniſh* Gold Duſt.

Preſ. Can you prove it?

Mr. *Meinzies.* We have a Goldſmith here, whom I deſire may be ſworn.

David Jeſs ſworn Says, That he has ſeen a great deal of the Gold Duſt that was brought in by theſe Pirates, but hath not ſo much Skill as to tell, whether it be *Spaniſh* or *Portugueſe* Duſt, and believes nobody elſe can diſtinguiſh one from the other.

Preſ. You attempt a very vain Thing, for had the Duſt been dug in *Mexico*, yet if our Friends have it in keeping, it is Piracy to take it from them. Beſides, what Anſwer can you give to all the coined Gold ſhewn in Court, with the other Things, which appear plainly to be *Portugueſe?*

Mr. *Meinzies.* The next Thing, in Point of Law, that I would offer upon the Evidence againſt Captain *Quelch*, is, That the ſeveral Witneſſes differ very much as to the Places where the ſeveral Veſſels were taken, and as to the Number of Perſons that were on board thoſe Veſſels.

Preſ. That Difference is very immaterial; for it matters not what Number of *Portugueſe* there were on board, ſo there were any: And as to Difference of Place, or Latitude, two Artiſts may differ in their Obſervations at the ſame Time; and you have heard the Reaſon why one of the Witneſſes cannot be ſo poſitive as to his Latitudes, *viz.* becauſe Captain *Quelch* cut out his Journal; but he, and all the reſt, are poſitive it was done upon the Coaſt of *Braſil*, in their very Harbour, and in Sight of their Forts and Caſtles.

Mr. *Meinzies.* 'Tis plain, that none of the Witneſſes underſtand the *Portugueſe* Language; and it ought to be very poſitive Evidence to take away a Man's Life.

Preſ. I believe her Majeſty's Commiſſioners, now preſent, will think they have very poſitive Proof; however, they are the Judges of that.

Mr. *Meinzies.* The next Thing, in Point of Law, that I would offer in Behalf of Capt. *Quelch*, is, That whereas, in the laſt Article, he is charged with the Murder of the *Portugueſe* Captain; it is well known he was not the Man that did the Fact. Now, by the Civil Law, only he that gives the Stroke, Wound, or the like, is the Murderer: So ſays *Molloy*, in his Treatiſe *De Jure Maritimo*, in his Chapter of Piracy.

Mr. *Newton.* But the ſame Book ſays, That if the Common Law have Juriſdiction of the Cauſe, all that are preſent, and aſſiſting at ſuch a Murder, are Principals. Now the Statute 28 *Hen.* VIII. makes all Piracies, Robberies and Murder upon the High-Seas, triable according to the Rules of the Common Law, as if they had been committed upon the Land.

Mr. *Meinzies.* May it pleaſe your Excellency, I have yet one Thing further to offer againſt the Queen's Witneſſes in this Matter: That is, That they are not competent Witneſſes, having not had Her Majeſty's Pardon.

Mr. *Newton.* It has never been thought convenient to give Approvers their Pardon, until they have actually convicted their Accomplices; leſt, after their having their Pardon, they may refuſe it; although after they have convicted thoſe they approve, their Pardon is *ex Debito Juſtitiæ.* This is the Opinion of my Lord *Coke* in his Pleas of the Crown, and ſo has the Practice been ſince.

Mr. *Meinzies.* I have but one Thing more, may it pleaſe this Honourable Court, to offer in Behalf of Capt. *Quelch*, that is, upon the late Act of Parliament made in the late Reign, which appoints this Honourable Court, for the Words of it are, *That the Proceedings of this Court, in examining, trying, and condemning Pirates, ſhall be according to the Civil Law, and the Methods and the Rules of the Admiralty.*

Now, by the Civil Law, which is founded upon the Reaſon and Cuſtom of Nations, no Accomplice can be a Witneſs, being equally guilty with thoſe he accuſes. So ſays *Wiſeman*, Doctor of the Civil Laws, in his Treatiſe of the Civil Law, *Chap.* 8. *page* 73. And in the ſame Book, touching examining Witneſſes upon Oath, *page* 114, and 119. And the ſame Author obſerves, That among the *Romans*, when a Man was criminally accuſed, they were ſo tender of the Lives and Safety of their People, that to convict a Man by Proof, was no eaſy, but a very difficult Thing, *&c.* The allowing theſe Witneſſes will be inconſiſtent with the Act of Parliament itſelf, whereby the Perſons accuſed have not only the Benefit of croſs-examining the Witneſſes, but alſo of bringing Evidences for their own Vindication; and it may be thought as proper to bring ſome of their own Company for their clearing, as the other Evidences for the accuſing them. As to Witneſſes in Piracy, ſee *Coke*'s *Inſtitutes*, *Part* 3d, *page* 24, 25. As to the Admiral's Power of Juriſdiction, *Coke*'s *Inſtitutes*, *Part* 4, *page* 134; and *Proceedings on Piracy*, *page* 147, 154. and *Part* 3*d*, *page* 119, 192.

Queen's Advocate. What Mr. *Meinzies* ſays, may it pleaſe your Excellency, of the Civil Law, is ſo far certain, that the Witneſſes in Caſes of Piracy, by the Methods of the Civil Law, muſt be ſuch as are indifferent, and ſaw the Fact committed, but no Ways concerned in the doing of it: But this Method of trying of Pirates, the Statute of *Henry* VIII. complains of as too ſtrict, and tending rather to let Pirates eſcape, than be brought to Juſtice; and does therefore perfectly reject it, and does enact, That for the future, all Piracies, *&c.* committed upon the High-Seas, ſhall be tried according to the Courſe of the Common Law, as if they had been committed upon the Land.

Now it is very well known, That by the Common Law Accomplices are many Times admitted to be Approvers againſt thoſe that were Partners with them in their Crimes; and, indeed, in many Caſes, there happens to be no other Way to bring Criminals to their juſt Puniſhment, but by ſingling out ſome of their Company, that may be the leaſt guilty, and make uſe of them to convict the reſt.

Mr. *Meinzies.* I don't take myſelf to be thoroughly anſwered by Mr. Advocate, as to what I offered in the laſt Place; for I take the Caſe of Pirates, that may be tried in *England*, upon the Statute of *Henry* VIII. to differ very much from the Caſe of Pirates that are tried in the Plantations, by Virtue of the New Statute: For, admit that in the former Caſe, Accomplices or Approvers may be allowed as Witneſſes; ſince Pirates that are tried upon that Statute are allowed a Jury, yet in the latter Caſe, thoſe that are tried for Piracy in the Plantations, being deprived of the Benefit of a Jury, the Statute ſeems to deſign an Equivalent to a Jury, by directing the Commiſſioners of ſuch Courts, to proceed according to the Civil Law, and Method of the Court of Admiralty.

Queen's Advocate. As to the Method of the Court of Admiralty, 'tis now above an Hundred and Three-ſcore Years ſince the Statute of *Henry* VIII. was made; a Term long enough to make a Method of any Court; for ever ſince that Time hath the Court of Admiralty proceeded in Caſes of Piracy according to the Rules of the Common Law. And then, as to that other Part of the new Statute, relating to Piracy, that ſays, This Court is to proceed according to the Civil Law; with Submiſſion, we underſtand it to be of the ſummary Way of proceeding by the Commiſſioners, and depriving the Priſoner of a Jury; for 'tis moſt certain, That the late Statute againſt Piracy doth ſtrengthen and eſtabliſh the Statute of *Henry* VIII. And it would be very odd to ſuppoſe, that what the firſt Act of Parliament in theſe Caſes had rejected, and condemned, the Method of the Civil Law, in the Trial of Pirates, *&c.* the ſecond Act of Parliament ſhould be reconciled to that Method, to reſtore and ſet it up in the Plantations, eſpecially when the Title of the new Act is an Act *For the more effectual Suppreſſion of Piracy*, &c.

Preſ. Capt. *Quelch*, if you have any Thing further to offer for yourſelf, or if you would croſs-examine the Witneſſes, the Court will hear you.

Capt. *Quelch.* I deſire *Pimer* may be aſked, Whether there was any Bolt upon the Captain's Cabbin-Door, when we firſt ſailed?

Anſ. Pimer. It was faſtened with a Marlin-Spike.

Capt. *Quelch.* Was I then on board?

Preſ. The Witneſſes have anſwered as to that already.

Capt. *Quelch.* I deſire the Witneſſes may be aſked, Whether they know the Gold Duſt to be *Portugueſe* Duſt?

Preſ. This is not material, Capt. *Quelch.*

Capt. *Quelch.* I deſire *Pimer* may be aſked, How he knows the firſt Prize was taken the Fifteenth of *November?*

Pimer. I ſay it was on or about that Day; I ſet down the very Day in my Journal, but 'twas torn out; I cannot now ſwear to a Day.

Capt. *Quelch.* How many Tun was the ſecond Veſſel that was taken?

Preſ. Capt. *Quelch*, this is not croſs-examining the Witneſs, but rather examining him over again: If you would ſay any Thing to the Purpoſe, you ſhould acquaint this Court, where you took thoſe Quantities of Gold Duſt, and coined Gold, thoſe Negroes, *&c.* that have been ſhewn to this Court: If they were taken from the *French*, or *Spaniards*, let us ſee ſome of them here, or ſome Evidence of their being ſo taken.

Queen's Advocate. We are now gone through the Courſe of the Queen's Evidence againſt Capt. *John Quelch*, the Priſoner at the Bar; and beſides what his Accomplices have declared againſt him, the Circumſtances of this Matter are ſo many, as put it beyond all Queſtion, but that the Priſoner at the Bar is guilty of what he ſtands charged with; for upon his Trial, we have ſeen the King of *Portugal*'s Enſign flying, his Coin current, his Servants, I mean his Negroes waiting, his Merchandize expoſed to public View, inſomuch, one would think that we were in *Portugal* itſelf. Upon the whole Matter, we muſt leave it to Her Majeſty's Honourable Commiſſioners of this Court to conſider, whether Capt. *John Quelch* is not guilty of the ſeveral Piracies, Robberies, and Murder, that he ſtands charged withal.

Ordered, That the Court be cleared immediately.

After an Hour's Conſideration, the Court was opened again.

Preſ. Capt. *John Quelch*, 'tis now ſix Days ſince this Court firſt ſat, by Her Majeſty's ſpecial Command to myſelf, and theſe Gentlemen Commiſſioners, before whom you have been indicted upon, or charged with ſeveral Articles of Piracies, Robberies, and Murder; and you have been heard thereupon. This Court hath weighed and conſidered the ſeveral Evidences that have been produced on Her Majeſty's Behalf againſt you, and your own Allegations for you; and upon the whole, have found, and adjudge you guilty of the ſeveral Articles of Piracy, Robbery, and Murder, wherewith you are charged, and have agreed, that Sentence ſhould be pronounced againſt you for the ſame accordingly.

Regiſter. Make Proclamation of Silence.

Cryer. All manner of Perſons are commanded to keep Silence while Judgment is giving, upon Pain of Impriſonment.

And then Sentence was pronounced by the Preſident of the Court, as the Law directs in Caſes of Piracy, *&c.*

Then the Court adjourned 'till nine o'Clock the next Morning.

Tueſday 20th of June, 1704, in the Morning.

The Court being opened, and Proclamation made, three Negroes, belonging to Capt. *Quelch*'s Company, were ſet to the Bar, *viz. Cæſar-Pompey, Charles*

Charles, and *Mingo*, and arraigned upon the Articles of Piracy. *&c.* aforesaid, (*Mutatis Mutandis*) and severally pleaded, Not Guilty.

Queen's Advocate. May it please your Excellency, and the rest of the Honourable Commissioners of this Court, the three Prisoners now at the Bar are of a different Complexion, 'tis true, from the rest that have been arraigned upon these Articles; but it is very well known, that the first and most famous Pirates that have been in the World were of their Colour; and Negroes, though Slaves, are as capable of taking away the Lives and Estates of Mankind, as any Freemen in the World; and if we prove that these Fellows have been as active in all this Matter as the rest of the Company, we doubt not but you will think, and adjudge them equally guilty with the others.

Pres. Pimer, look upon the Prisoners now at the Bar, and acquaint the Court, Whether they were on board the Brigantine *Charles* during your late Voyage, and how they behaved themselves while they were on board.

Pimer. (*Looking on the Prisoners.*) These three Negroes were on board during the whole Voyage, but were not active, nor did they any thing but as they were commanded: *Cæsar-Pompey* and *Charles* were the Cooks of the Brigantine, and sounded the Trumpet when they were commanded, but handled no Arms; neither did *Mingo*.

Clifford and *Parrot* being examined, affirmed the same Thing.

Pimer farther added, That he knew *Mingo* to have been Capt. *Plowman*'s Slave, and that he brought him from *Guinea*.

Mr. *John Colman* informed the Court also, That the other two Negroes, *Cæsar-Pompey* and *Charles*, were his Brother Colonel *Hobbey*'s Slaves: That they did not run away from their Master, but were forcibly carried away by Capt. *Quelch* and Company.

Upon this, the Court being cleared, in less than Half an Hour was opened again, and the three Negroes aforesaid brought in.

Pres. Cæsar-Pompey, *Charles*, and *Mingo*, you have been charged with several Articles of Piracy, *&c.* to which you have pleaded, Not Guilty; this Court has considered of the Matter, and declare you to be Not Guilty.

Whereupon they were ordered upon their Knees, *&c.*

After this, Mr. *Meinzies* moved for some farther Time for the rest of the Prisoners; and then the Court adjourned 'till three o'Clock Afternoon.

Three *P. M.*

The Court was opened, and Proclamation made: Then *Lambert*, *Wilde*, *Scudamore*, *Roach*, *Perkins*, and *James*, were set to the Bar, and after some little Time spent, *John Lambert*, and *Charles James*, desired that they two might be tried by themselves; upon which the Court ordered the rest to be taken from the Bar; and then the Court proceeded to examine the Witnesses on Behalf of the Queen against the Prisoners.

Pres. Pimer, What do you know as to *Lambert*'s being concerned in confining Capt. *Plowman*, and altering the Voyage?

Pimer. I can't say that either he or *James* were concerned in bolting the Cabbin Door, but they were both on board when we came to sail; and though they declared they were unwilling to go to the Southward, yet after Capt. *Plowman*'s Death, there was a Consultation held, and both *Lambert* and *James* were at it; and I know nothing to the contrary, but that they consented with the Majority.

Court. Please to let the Articles be read to the Witnesses, and then ask, how far *Lambert* and *James* were concerned in all, or any of them.

Art. 1. read. *Witnesses. Lambert* and *James* were on board when we took that Vessel, and so at the Second and Third, Fourth and Fifth.

Pres. And as active as any of the rest?

Witnesses. Yes.

Art. 6. read. *Witnesses.* They were both on board our Brigantine when this was done, and assisted at the Seventh and Eighth Captions.

Art. 9. read. *Witnesses. Lambert* was on board the Tender, above a Mile off at that Time, but *James* was one that boarded the Ship.

Pres. Lambert and *James*, Would you ask the Witnesses any Questions?

Lambert. I was sick down in the Gun-room when they bolted the Door upon the Captain, and never gave my Consent to go to the Southward. What I did, I was forced to.

Pres. Pimer, Did you ever hear *Lambert* protest against any of these piratical Actions, or did he desire to be set on Shore?

Pimer. He did desire to be set on Shore; but it was before the Captain went from *Nantasket*. I never heard any of them manifest their Dislike as to our going to *Brasil*, but were as forward as the rest were.

Pres. Pimer, Do you know whether *Lambert* and *James* had their Share of the Treasure?

Witnesses. They had each of them their Shares.

Pres. What say you, *James?*

James. I was constrained against my Will to go to Sea, and was deluded by false Pretences.

Pres. Pimer, What say you as to *James?*

Pimer. I cannot say that he said any Thing of what he pretends he said, but that he was unwilling to pilot the Ship, which I judged was, because he was averse to the Voyage.

Pres. Did you hear *Lambert* advise the Captain to go off from the Coast of *Brasil* against some known Enemy?

Witnesses. No, we never heard him give any such Advice.

Pimer. I have heard him several Times declare himself against the Voyage, but never express himself sorrowful for, or protest against any of the Piracies, nor *James* neither.

Pres. You have brought in a very considerable Treasure with you, whereof each of you have had your Shares: Whence had you it? Where are the *French* and *Spaniards* you took it from?

James. It was the Commander did it; and we were not on board the Vessel that took the Gold Dust. The Reason we accepted of our Shares was, because otherwise they would have killed us, or set us upon some desolate Island, where we should have been starved.

Lambert. I was only at the taking of two of the Vessels; and you may be sure I would never have come Home in the Vessel, if I had thought I had done any Thing amiss, or that I should have been arraigned for.

The Prisoners having nothing farther to offer, the Court was ordered to be cleared, and in some small Time after opened again, and the Prisoners set to the Bar.

Pres. John Lambert, and *Charles James*; you have here been arraigned upon several Articles of Piracy, *&c.* committed by you (with others) upon the Subjects of her Majesty's good Ally, *&c.* to which you have pleaded, Not Guilty: You have been heard thereupon, what you had to say for yourselves: This Court having considered the Evidence for the Queen against you, and your own Allegations for you, do adjudge each of you Guilty of the several Articles of Piracy, *&c.* What have you to say, why Sentence of Death should not be pronounced against you?

Answ. We must leave it to God and your Honours: We are as innocent as the Child unborn of the Things we are charged withal.

Pres. Hearken to the Sentence of the Court against you.

Then Sentence was pronounced by the President of the Court, as the Law directs in Cases of Piracy, *&c.*

After this, *Benjamin Perkins*, *William Wilde*, *Christopher Scudamore*, and *Peter Roach*, were set to the Bar.

Ordered, That *Scudamore* be tried by himself, and the rest taken from the Bar.

The several Articles being read to the Witnesses, they all swore, That *Scudamore* was with them all the Voyage; that he was very active in every Thing, and that he had his Share of the Gold.

Queen's Advocate. May it please your Excellency, we shall farther prove against the Prisoner at the Bar, That he was the only Man who gave the mortal Wound to the Captain of the *Portuguese* Ship.

Pres. Pimer, What do you know as to that?

Answ. There was a Controversy on board our Brigantine, concerning who it was that killed the Captain of the *Portuguese* Ship, *Scudamore* saying, it was he, and another said, it was he that did it.

Pres. Set up the Negro Boy who was taken in that Ship.

The Negro Boy being set up, was bid to look upon the Prisoner, and say, Whether it was he that killed his Master?

And the Interpreters reported to the Court, That the Negro Boy said, That was the Man who killed his Master, and that he killed him with a Petard; that his Master fell down immediately, and did not speak a Word.

Pres. What say you, *Scudamore?*

Scudamore. I did not kill the Captain of the *Portuguese* Ship.

Pres. Where is your Gold?

Scudamore. I can't tell: What I said upon my first Examination about it, is false.

Pres. Have you any thing farther to say?

Scudamore. No.

After this, a Petition was given into Court, signed by several of the Prisoners, *viz. William Wilde*, *John Dorothy*, *Dennis Carter*, *Peter Roach*, *Francis King*, *John Pitman*, *Richard Laurence*, *Benjamin Perkins*, *Erasmus Peterson*, *John Carter*, *Nicholas Richardson*, *John King*, *James Austin*, *William Jones*, and *Charles King*; praying that they might withdraw their several Pleas of Not Guilty, and be admitted to confess and plead Guilty, hoping thereupon for the Queen's Mercy, *&c.*

Upon which they were each of them asked, Whether they set their Hands to that Petition? And they all severally owned they did.

Pres. You who have here subscribed this Petition, must be told, That your Commander, and some others of your Company, have had their Trials, and are found Guilty: We don't take your pleading Guilty now to be any Submission, nor will it of itself entitle you to Mercy. This Court can make no Bargain with you: If any of you can be distinguished, as being forced away, professing against the Voyage, Sickness, or the like, this Court will consider of it, so far as is proper for them.

Mr. Register. You must ask each of the Prisoners, one by one, Whether they are Guilty, or Not Guilty, of what they are charged with?

Register. How say you, *Richard Lawrence*, Are you Guilty, or Not Guilty?

Richard Lawrence. Guilty.

So said *Erasmus Peterson*, *John Carter*, *Francis King*, *Peter Roach*, &c. the rest of the Petitioners.

After this, *John Miller* was set to the Bar.

And the Queen's Witnesses being examined about *John Miller*, made Oath, That he was on board the Brigantine *Charles* during the Voyage, and did not protest against going upon the Coast of *Brasil*; that he was in Health, and serviceable at the Time of every Caption, as the rest were, and had his Share of the Gold, *&c.* that was taken.

Miller. Saying he was sick some Part of the Voyage.

Witnesses. He was so, but was well again before we made our first Caption. (Article 4th read). He was at this Caption well in Health, and consenting to it; so at the 5th and 6th Articles, and at the taking of the Prize in the 7th Article. (Article 8th read.) He was then on board the Tender that took the Gold Vessel. (9th Article read.) He boarded that Ship with Sword and Pistol.

Pres. What have you to say for yourself? You have heard what has been proved against you.

Miller. I was at the taking of the Ship and a Bark; but did not know what they were, for they shewed no Colours.

Pres. Pimer. Did you ever hear any of your Company say, as if *Miller* was one of *Avery*'s Crew?

Pimer. I heard some of them say, they heard him say so himself; so said *Clifford*.

Miller. I was none of *Avery*'s Company.

Pres. Set *John Templeton* to the Bar, which was done; and the Queen's Witnesses being sworn, deposed, That *John Templeton* was on board the Brigantine all their late Voyage, and that he did sometimes bear Arms; but being not above fifteen Years of Age, they allowed him but Half a Share, which his Master was also to have: That he was for two Months together Cook on board the Tender, but being but a Boy, he had no Vote with the rest of the Company, but was ordered as every one pleased.

Mr. *Henry Francklyn* being sworn, deposeth, That the Prisoner at the Bar was his Servant, and that he put him on board the Brigantine *Charles* as such, upon Captain *Plowman*'s Request: That he saw his Boy the *Sunday* Evening after the Pirates came in, and that his Share of Gold was never

never in his own Keeping, for that the Company would not truſt him with it, but he received it for him.

Preſ. Templeton, What have you to ſay?

Templeton. I have nothing to ſay, but that my Maſter ſent me out, and I knew not whither we were going.

And after this, *William Whiting* was ſet to the Bar, and charged with the ſame Articles of Piracy, *&c.* who thereupon pleaded Not Guilty.

And *Pimer* and the reſt of the Witneſſes being examined concerning him, informed the Court, That from the firſt Time of their coming upon the Coaſt of *Braſil*, unto their coming Home, *Whiting* was ſick, and never bore Arms, being utterly uncapable of doing any thing.

Preſ. Had he any Share?

Witneſſes. He had ſixteen Ounces allowed him by the Company; but they told him it was not for his Deſerts, but out of their Generoſity that they gave it him.

Preſ. Did he expreſs any Diſſatisfaction at what was done?

Witneſſes. No, not that I heard; but he was taken ſick on the Beginning of *November*, and came very ſick a-ſhore.

S. Sewall, Eſq. *Whiting*, upon his Examination, told me, That he had been acquainted with Captain *Plowman* at *New-York*, and that it was out of Reſpect that he had for him that he came hither, and went the Voyage.

Mr. *William Clark* ſworn.

Depoſed, That Captain *Plowman* ſent for Mr. *Colman* and himſelf, and recommended the Priſoner to them as a Perſon fit to be Clerk, or Secretary on board the Ship, and to take an Account of all their Affairs; and that Captain *Plowman*'s Letters to them were written by the Priſoner; and when he came aſhore, he was in a very low Condition; but ſaid, when he was able, he would do them all the Service he could.

Pimer. I know of his writing Letters from Captain *Plowman*.

Preſ. Would you ſay any thing yourſelf, *Whiting?*

Whiting. I never was in any Action, being ſick all the while we were on the Coaſt of *Braſil*, and did not diſcover their Piracy when I came on Shore, becauſe I was then very ſick, and like to die.

The Court was ordered to be cleared, and then adjourned to nine o'Clock next Morning.

Wedneſday, June 21, *A. M.*

The Court being opened, and Proclamation made, *John Templeton* and *William Whiting* were ſet to the Bar.

Preſ. John Templeton, This Court has conſidered your Caſe, and have been very indulgent to you in regard of your Youth, and have adjudged you to be Not Guilty.

And you alſo, *William Whiting*, the Court has conſidered of your Caſe, and have adjudged you alſo to be Not Guilty. Upon which each of them upon their Knees thanked the Court, *&c.*

After which, *Chriſtopher Scudamore* and *John Miller* were ſet to the Bar.

Preſ. Scudamore and *Miller*, upon hearing the Queen's Evidences againſt you, and your own Allegations for yourſelves; this Court doth adjudge you both to be Guilty of what you have been charged with. What have you to ſay, why Sentence of Death ſhould not paſs againſt you?

Scudamore. I had no Hand in altering the Voyage, nor killing the *Portugueſe* Captain.

Miller. I was never active after the Voyage was altered.

Preſ. Attend to the Sentence of this Court againſt you.

Then Sentence was pronounced by the *Preſident* of the Court, as the Law directs in Caſes of Piracy, *&c.* againſt the ſaid *Scudamore* and *Miller*.

Ordered, That all the reſt of the Priſoners that pleaded Guilty, be brought to the Bar.

Preſ. Set ſeven of them to the Bar.

Then *William Wilde*, *John Dorothy*, *Dennis Carter*, *Peter Roach*, *Francis King*, *John Pitman*, and *Richard Lawrence*, were ſet to the Bar.

Preſ. You, and each of you, have been arraigned upon ſeveral Articles of Piracy, *&c.* to which you have ſeverally pleaded Guilty. What have you to ſay, why Sentence of Death ſhould not paſs upon you?

Anſ. Nothing.

Preſ. Then attend to the Sentence.

Then Sentence was pronounced by the *Preſident* of the Court, as the Law directs in Caſes of Piracy, *&c.* againſt the ſaid ſeven Perſons laſt named.

Preſ. Set the reſt to the Bar.

Benjamin Perkins, *Eraſmus Peterſon*, *John Carter*, *Nicholas Richardſon*, *John King*, *James Auſtin*, *William Jones*, and *Charles King*, were ſet to the Bar.

Preſ. You, and every of you, have been arraigned upon ſeveral Articles of Piracy, Robbery, and Murder, unto which you, and each of you, did plead Guilty. What have you to ſay, why Sentence of Death ſhould not paſs againſt you for the ſame?

Anſ. We leave ourſelves to God Almighty.

Preſ. Attend then to the Sentence.

Then Sentence was pronounced by the *Preſident* of the Court, as the Law directs in Caſes of Piracy, *&c.* againſt the eight Perſons laſt named.

And then the Priſoners were all remanded to Priſon, and the Officer charged to take great Care of them.

On *Friday, June* 30, 1704, *John Quelch*, *John Lambert*, *Chriſtopher Scudamore*, *John Miller*, *Eraſmus Peterſon*, and *Peter Roach*, were executed in *Charles* River, between *Broughton*'s Warehouſe and the Point.

An Account of the Behaviour, and laſt Dying Speeches, *of the ſix Pirates that were executed on* Charles *River*, Boſton *Side, on* Friday, June 30, 1704; *viz. Captain* John Quelch, John Lambert, Chriſtopher Scudamore, John Miller, Eraſmus Peterſon, *and* Peter Roach.

ON *Friday* the 30th of *June*, 1704, purſuant to Orders in the Dead Warrant, the aforeſaid Pirates were guarded from the Priſon in *Boſton*, by forty Muſketeers, Conſtables of the Town, the Provoſt-Marſhal, and his Officers, *&c.* with two Miniſters, who took great Pains to prepare them for the laſt Article of their Lives. Being allowed to walk on Foot through the Town, to *Scarlet*'s Wharf, where the Silver Oar being carried before them, they went by Water to the Place of Execution, being crowded and thronged on all Sides with Multitudes of Spectators.

At the Place of Execution, they then ſeverally ſpoke as follows, viz.

I. Captain *John Quelch*. The laſt Words he ſpoke to one of the Miniſters at his going up the Stage, were, *I am not afraid of Death*; *I am not afraid of the Gallows*; *but I am afraid of what follows: I am afraid of a Great* God, *and a Judgment to come*. But he afterwards ſeemed to brave it out too much againſt that Fear: Alſo when on the Stage, firſt he pulled off his Hat, and bowed to the Spectators, and not concerned, nor behaving himſelf ſo much like a dying Man as ſome would have done. The Miniſters had, in the Way to his Execution, much deſired him to glorify God at his Death, by bearing a due Teſtimony againſt the Sins that had ruined him, and for the Ways of Religion which he had much neglected. Yet now being called upon to ſpeak what he had to ſay, it was but thus much: *Gentlemen, 'Tis but little I have to ſpeak: What I have to ſay is this, I deſire to be informed for what I am here*; *I am condemned only upon Circumſtances: I forgive all the World: So the Lord be merciful to my Soul.* When *Lambert* was warning the Spectators to beware of bad Company, *Quelch* joining, *They ſhould alſo take Care how they brought Money into* New-England, *to be hanged for it.*

II. *John Lambert*. He appeared much hardened, and pleaded much on his Innocency: He deſired all Men to beware of bad Company; he ſeemed in a great Agony near his Execution: He called much and frequently on Christ for Pardon of Sin; that God Almighty would ſave his innocent Soul: He deſired to forgive all the World: His laſt Words were, *Lord forgive my Soul! Oh, receive me into Eternity! Bleſſed Name of* Christ! *Receive my Soul.*——

III. *Chriſtopher Scudamore*. He appeared very penitent ſince his Condemnation; was very diligent to improve his Time going to, and at the Place of Execution.

IV. *John Miller*. He ſeemed much concerned, and complained of a great Burden of Sins to anſwer for; expreſſing often, *Lord! What ſhall I do to be ſaved?*

V. *Eraſmus Peterſon*. He cried of Injuſtice done him; and ſaid, *It is very hard for ſo many Men's Lives to be taken away for a little Gold.* He often ſaid, *His Peace was made with God*; *and his Soul would be with God*; yet extreme hard to forgive thoſe, he ſaid, *wronged him*: He told the Executioner, *He was a ſtrong Man, and prayed to be put out of Miſery as ſoon as poſſible.*

VI. *Peter Roach*. He ſeemed little concerned, and ſaid but little, or nothing at all.

Francis King was alſo brought to the Place of Execution, but reprieved.

LVI. *The Trials of* Daniel Dammaree, *a Waterman*, Francis Willis, *a Footman, and* George Purchaſe, *a Sheriff's Officer, for High-Treaſon, in levying War in the Kingdom, againſt the Queen, under Pretence of pulling down Meeting-Houſes.* 9 Annæ, 1710.

[*At the* Seſſions-Houſe *in the* Old-Bailey.]

Die Martis, Decimo Octavo Die Aprilis, Anno Domini, 1710, *Anno Annæ, Dei Gratia, Magnæ Britanniæ, Franciæ, & Hiberniæ Reginæ, &c. Nono.*

A BILL of Indictment for High-Treaſon, in levying open War againſt her Majeſty, having been found Yeſterday by the Grand Jury for the County of *Middleſex*, at *Hicks's Hall*, againſt *Daniel Dammaree*, *Francis Willis*, and *George Purchaſe*, the Priſoners, being in Cuſtody of the Keeper of *Newgate*, the Court proceeded thus:

Clerk of Arraigns. Set *Daniel Dammaree* to the Bar.

(Which was done.)

Clerk of Arr. Daniel Dammaree, Hold up thy Hand.

(Which he did.)

You ſtand indicted by the Name of *Daniel Dammaree*, late of the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, Labourer; for that you, not having the Fear of God before your Eyes, nor weighing the Duty of your Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, the Love, and true and due Obedience which every true and faithful Subject of our Sovereign Lady *Anne*, by the Grace of God, of *Great Britain*, *France*, and *Ireland*, Queen, Defender of the Faith, *&c.* towards our ſaid Lady the Queen ſhould, and of Right ought to bear, wholly withdrawing, and conſpiring, and with all your Strength intending the Peace and common Tranquillity of this Kingdom of *Great Britain* to diſturb; the firſt Day of *March*, in the 9th Year of the Reign of our ſaid Sovereign Lady the Queen, that now is, at the Pariſh of St. *Clement Danes* aforeſaid, in the County of *Middleſex* aforeſaid,

aforeſaid, falſely, unlawfully, deviliſhly, and traitorouſly, did compaſs, imagine, and intend open War, Inſurrection, and Rebellion, againſt our ſaid Lady the Queen, within this Kingdom of *Great-Britain*, to raiſe and levy: And your ſaid Treaſons, Compaſſings, Imaginations, and Intentions to fulfil and bring to effect, you the ſaid *Daniel Dammaree* afterwards, that is to ſay, the ſaid Firſt Day of *March*, in the Ninth Year aforeſaid, in the ſaid Pariſh of St. *Clement Danes*, in the County of *Middleſex* aforeſaid, by Force and Arms, againſt our ſaid Sovereign Lady the Queen, your Sovereign and undoubted Liege Lady, with a great Multitude of Men, to the Jurors unknown, to the Number of Five Hundred Perſons, armed and arrayed in a warlike Manner, that is to ſay, with Colours flying, Swords, Clubs, and other Weapons, as well offenſive as defenſive, unlawfully and traitorouſly being aſſembled and gathered together, publick War againſt our ſaid Lady the Queen, at the Pariſh aforeſaid, in the County aforeſaid, the Day and Year aforeſaid, traitorouſly did prepare, begin, and levy, againſt the Peace of our ſaid Sovereign Lady the Queen, that now is, her Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided.

Cler. of Arr. How ſay you, *Daniel Dammaree*, Are you Guilty of the High Treaſon, for which you have been indicted, and are now arraigned, or Not Guilty?

Dammaree. My Lord, I was ſo much in Liquor, that I do not know what I did.

Mr. Serj. *Richardſon.* You muſt now plead either Guilty, or Not Guilty. If you plead Not Guilty, you will be put upon your Trial, and be heard fully in your Defence, by yourſelf, or Counſel.

Cler. of Arr. Are you Guilty, or Not Guilty?

Damm. Not Guilty.

Cler. of Arr. Culprit, How wilt thou be tried?

Damm. By God and the Country.

Cler. of Arr. God ſend thee a good Deliverance.

(*Then the Priſoner was taken away.*)

Cler. of Arr. Set *Francis Willis* to the Bar.—(*Which was done.*)

Cler. of Arr. Francis Willis, hold up thy Hand.—(*Which he did.*)

You ſtand indicted by the Name of *Francis Willis*, late of the Pariſh of St. *Andrew*, *Holborn*, in the County of *Middleſex*, Labourer; for that you, not having the Fear of God before your Eyes, nor weighing the Duty of your Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, the Love, and true, and due Obedience, which every true and faithful Subject of our Sovereign Lady *Anne*, by the Grace of God, of *Great-Britain*, *France*, and *Ireland*, Queen, Defender of the Faith, &c. towards our ſaid Lady the Queen ſhould, and of Right ought to bear, wholly withdrawing, and conſpiring, and with all your Strength intending the Peace and common Tranquillity of this Kingdom of *Great-Britain* to diſturb; the Firſt Day of *March*, in the Ninth Year of the Reign of our ſaid Sovereign Lady the Queen, that now is, at the Pariſh of St. *Andrew*, *Holborn*, aforeſaid, in the County of *Middleſex* aforeſaid, falſely, unlawfully, deviliſhly, and traitorouſly did compaſs, imagine and intend open War, Inſurrection, and Rebellion, againſt our ſaid Lady the Queen, within this Kingdom of *Great-Britain*, to raiſe and levy; and your ſaid Treaſons, Compaſſings, Imaginations, and Intentions, to fulfil, and bring to effect, you the ſaid *Francis Willis*, afterwards, that is to ſay, the ſaid Firſt Day of *March*, in the Ninth Year aforeſaid, in the ſaid Pariſh of St. *Andrew*, *Holborn*, in the County of *Middleſex* aforeſaid, by Force and Arms, againſt our ſaid Sovereign Lady the Queen, your Sovereign and undoubted Liege Lady, with a great Multitude of Men, to the Jurors unknown, to the Number of Five Hundred Perſons, armed and arrayed in a warlike Manner, that is to ſay, with Colours flying, Swords, Clubs, and other Weapons, as well offenſive as defenſive, unlawfully and traitorouſly being aſſembled and gathered together, publick War againſt our ſaid Lady the Queen, at the Pariſh aforeſaid, in the County aforeſaid, the Day and Year aforeſaid, traitorouſly did prepare, begin, and levy, againſt the Peace of our ſaid Sovereign Lady the Queen, that now is, her Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided.

Cler. of Arr. How ſay you, *Francis Willis*, Are you Guilty of the High Treaſon whereof you are indicted, and for which you are now arraigned, or Not Guilty?

Willis. I am entirely innocent.

Mr. Serj. *Richardſon.* Then plead Not Guilty; and if upon Trial you appear to be innocent, you will be acquitted.

Cler. of Arr. Are you Guilty, or Not Guilty? You muſt uſe the Words.

Willis. Not Guilty.

Cl. of Arr. Culprit, How wilt thou be tried?

Cl. of Newgate. You muſt ſay, By God and your Country.

Willis. By God and the Country.

Cler. of Arr. God ſend you a good Deliverance.

(*Then he was taken from the Bar.*)

Cler. of Arr. Set *George Purchaſe* to the Bar.—(*Which was done.*)

Cl. of Arr. George Purchaſe, hold up thy Hand.—(*Which he did.*)

You ſtand indicted by the Name of *George Purchaſe*, late of the Pariſh of St. *Giles in the Fields*, in the County of *Middleſex*, Labourer; for that you, not having the Fear of God before your Eyes, nor weighing the Duty of your Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, the Love, and true and due Obedience, which every true and faithful Subject of our Sovereign Lady *Anne*, by the Grace of God of *Great-Britain*, *France*, and *Ireland*, Queen, Defender of the Faith, &c. towards our ſaid Lady the Queen ſhould, and of Right ought to bear, wholly withdrawing, and conſpiring, and with all your Strength intending the Peace and common Tranquillity of this Kingdom of *Great-Britain* to diſturb; the Firſt Day of *March*, in the Ninth Year of the Reign of our ſaid Sovereign Lady the Queen, that now is, at the Pariſh of St. *Giles in the Fields* aforeſaid, in the County of *Middleſex* aforeſaid, falſely, unlawfully, deviliſhly, and traitorouſly, did compaſs, imagine, and intend open War, Inſurrection, and Rebellion, againſt our ſaid Lady the Queen, within this Kingdom of *Great-Britain*, to raiſe and levy; and your ſaid Treaſons, Compaſſings, Imaginations, and Intentions, to fulfil and bring to effect, you the ſaid *George Purchaſe*, afterwards, that is to ſay, the ſaid Firſt Day of *March*, in the Ninth Year aforeſaid, in the ſaid Pariſh of St. *Giles in the Fields*, in the County of *Middleſex* aforeſaid, by Force and Arms, againſt our ſaid Sovereign Lady the Queen, your Sovereign and undoubted Liege Lady, with a great Multitude of Men, to the Jurors unknown, to the Number of Five Hundred Perſons, armed, and arrayed in a warlike Manner, that is to ſay, with Colours flying, Swords, Clubs, and other Weapons, as well offenſive as defenſive, unlawfully and traitorouſly being aſſembled and gathered together, publick War againſt our ſaid Lady the Queen, at the Pariſh aforeſaid, in the County aforeſaid, the Day and Year aforeſaid, traitorouſly did prepare, begin and levy, againſt the Peace of our ſaid Sovereign Lady the Queen that now is, Her Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided.

Cler. of Arr. How ſay you, *George Purchaſe?* Are you Guilty of the High Treaſon for which you have been indicted, and are now arraigned, or Not Guilty?

Purc. Not Guilty.

Cler. of Arr. Culprit, How wilt thou be tried?

Purc. By God and the Country.

Cler. of Arr. God ſend thee a good Deliverance.

Then he was taken away, and the Court adjourned to the Day following.

Die Mercurii, 19 *Aprilis*, 1710, 9 *Annæ*.

Domina Regina verſus *Dammaree*.

P R E S E N T

The Right Hon. Sir *Samuel Garrard*, Bart. Lord-Mayor of the City of *London*; the Right Hon. Sir *Thomas Parker*, Knt. Lord-Chief-Juſtice of Her Majeſty's Court of Queen's Bench; the Right Hon. Sir *Edward Ward*, Knt. Lord-Chief-Baron of Her Majeſty's Court of Exchequer; the Hon. *Robert Tracy*, Eſq; One of the Judges of the Court of Common-Pleas; the Hon. Sir *Thomas Bury*, Knt. One of the Barons of the Exchequer, and a numerous Company of the Nobility, and Perſons of Quality and Diſtinction.

Cler. of Arr. Cryer, make Proclamation.

Cryer. O Yes.

Cler. of Arr. Again, again.

Cryer. O Yes, O Yes. All manner of Perſons that have any thing more to do at this General Seſſions of the Peace, Seſſions of Oyer and Terminer, holden for the City of *London*, and Gaol Delivery of *Newgate*, holden for the City of *London* and County of *Middleſex*, and adjourned over to this Day, Draw near, and give your Attendance, for now the Court will proceed to the Pleas of the ſame City and County.

God Save the Queen.

Cler. of Arr. Middleſex Cryer, make Proclamation.

Cryer. O Yes, O Yes. You good Men of the County of *Middleſex*, ſummoned to appear here this Day, to try between our Sovereign Lady the Queen, and the Priſoners that ſhall be at the Bar, anſwer to your Names as you ſhall be called, every Man at the firſt Call, upon Pain and Peril ſhall fall thereon.

(*Then the Jury that were returned on the Pannel, were all called over, and the Appearances of all thoſe that anſwered to the Call, were recorded.*)

Cler. of Arr. Set *Daniel Dammaree* to the Bar.—(*Which was done.*)

Cler. of Arr. Daniel Dammaree, Hold up thy Hand.---(*Which he did.*)

Cler. of Arr. You the Priſoner at the Bar, theſe good Men, whom you ſhall hear called, and do now perſonally appear, are to paſs between our Sovereign Lady the Queen and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to ſpeak to them as they come to the Book to be Sworn, and before they be Sworn.

Cler. of Arr. Call Sir *Edward Gould*, Knt.

Officer. Here he is, Sir.

Cler. of Arr. (*To the Priſoner.*) There is Sir *Edward Gould*, Do you challenge him?

Damm. No, my Lord, I don't intend to make any Challenges.

Cler. of Arr. Then hold Sir *Edward Gould* the Book.

(*Which was done.*)

Cler. of Arr. Look upon the Priſoner.

You ſhall well and truly Try, and true Deliverance make between our Sovereign Lady the Queen, and the Priſoner at the Bar, whom you ſhall have in Charge, and a true Verdict give according to your Evidence. So help you God.

Cler. of Arr. Richard Browne, Eſq;

(*He was Sworn.*)

The Priſoner making no Challenges, the following Gentlemen were Sworn.

J U R Y.

Sir *Edward Gould*, Knt.	*Giles Riddle*,
Richard Browne, Eſq;	*Thomas Dodd*,
Peter Levigne, Eſq;	*Charles Williams*,
Robert Breedon, Eſq;	*Thomas Sutton*,
Charles Bateman, Eſq;	*Daniel Selman*,
Peter Lekeux, Eſq;	*John Collis*.

Cler. of Arr. Cryer, Count theſe.

Sir *Edward Gould*, Knt.

Cryer. One, *and ſo of the reſt.*

Cler. of Arr. John Collis.

Cryer. Twelve good Men and true, ſtand together, and hear your Evidence.

Are you all Sworn, Gentlemen?

Cler. of Arr. Cryer, make Proclamation.

Cryer. O Yes, If any one can inform my Lords the Queen's Juſtices, the Queen's Serjeant, the Queen's Attorney-General, or this Inqueſt now to be taken, of the High Treaſon of which the Priſoner at the Bar ſtands indicted, let them come forth, and they ſhall be heard, for now the Priſoner ſtands at the Bar upon his Deliverance; and all others that are bound by Recognizance, to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or elſe they forfeit their Recognizance. And all Jurymen of *Middleſex* that have appeared, and are not Sworn, may depart the Court for this Time, and give their Attendance here again To-morrow Morning.

Cler. of Arr. Daniel Dammaree, hold up thy Hand. (*Which he did.*)

Gentlemen

Gentlemen of the Jury, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *Daniel Dammaree*, late of the Pariſh of St. *Clement-Danes*, in the County of *Middleſex*, Labourer, *for that he not having the Fear of God before his Eyes, but being mov'd and ſeduc'd by the Inſtigation of the Devil*, &c. (prout *in the Indictment*, mutatis mutandis,) *againſt the Peace of our Sovereign Lady the Queen, her Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided.* Upon this Indictment he has been arraign'd, and thereunto hath pleaded Not Guilty, and for his Trial hath put himſelf upon God and his Country, which Country you are. Your Charge is to inquire whether he be Guilty of the High-Treaſon whereof he ſtands indicted, in Manner and Form as he ſtands indicted, or Not Guilty. If you find him Guilty, you are to inquire what Goods and Chattels, Lands and Tenements he had at the time of the High-Treaſon committed, or at any time ſithence. If you find him Not Guilty, you are to inquire whether he fled for it: If you find that he fled for it, you are to inquire of his Goods and Chattels, Lands and Tenements, as if you found him Guilty. If you find him Not Guilty, nor that he fled for it, you are to ſay ſo, and no more, and hear your Evidence.

Foreman of the Jury. My Lord, here is ſuch a great Noiſe in the Court, that unleſs a Stop be put to it, we ſhall not be able to hear the Counſel, or the Evidence: We humbly pray the Court may be kept quiet.

L. C. J. Officer, make Proclamation of Silence.

Cryer. O Yes. My Lords, the Queen's Juſtices, ſtrictly charge and command all manner of Perſons to keep Silence upon Pain of Impriſonment.

L. C. J. Gentlemen of the Queen's Counſel, be pleas'd to proceed.

Then William Thomſon *of the* Middle-Temple, *Eſq. (afterwards Recorder of* London, *and Baron of the Exchequer,) of Counſel for the Queen, open'd the Indictment thus:*

Mr. *Thomſon.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, *Daniel Dammaree*, the Priſoner at the Bar, ſtands indicted, for that he, not having the Fear of God before his Eyes, but being moved by the Inſtigation of the Devil, and deſigning to withdraw the Cordial Love and Natural Obedience, which true and faithful Subjects of our Sovereign Lady the Queen do, and ought to bear towards Her, and intending to diſturb the Peace and common Tranquillity of this Kingdom, on the firſt of *March* laſt, in the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, traitorouſly compaſs'd and imagin'd to levy War, and ſtir up Rebellion and Inſurrection againſt our ſaid Lady the Queen within this Kingdom: And that he might accompliſh his ſaid Traitorous Imaginations and Deſigns, on the ſaid firſt of *March*, and in the ſaid Pariſh being aſſembled, with a Multitude and great Number of People armed, and arrayed in a Warlike Manner, he did then and there unlawfully and traitorouſly levy War againſt our ſaid Lady the Queen, contrary to the Duty of his Allegiance, againſt the Peace of our ſaid Lady the Queen, her Crown and Dignity.

To this Indictment he has pleaded Not Guilty.

Gentlemen, if the Evidence for the Queen prove the Charge, as laid in the Indictment, 'tis your Duty to find him Guilty.

Mr. Att. Gen. May it pleaſe your Lordſhip, and you Gentlemen of the Jury, the Record that has been open'd to you is an Indictment of High-Treaſon againſt the Priſoner at the Bar: It charges him with diſturbing the General Peace and Quiet of the Realm, and inciting Rebellion within your County. The Crime that this Indictment is founded upon, has in all Ages and Countries been accounted the higheſt Crime that can be committed againſt any State, or Government. The Laws of *England* are very expreſs, that if any Man takes himſelf to be aggrieved by any Law whatſoever, and endeavours by Force to ſeek Redreſs of thoſe Grievances, or to get any Reformation of thoſe Things he complains of, and this againſt the Civil Authority, it is levying of War, and is High-Treaſon within the Statute of the 25th of *Edw.* III.

That there has been an Inſurrection within this County, not only in the Place mention'd in the Indictment, but in other Places, I believe is ſo well known to all here, that it would be miſpending Time to call many Witneſſes to that matter. But it will be incumbent on us, now the Priſoner ſtands on his Trial, to ſhew what particular Part he had in this Buſineſs; and therefore we ſhall call many Witneſſes to prove what Part he had in this Affair: And if they give the ſame Account that they have given in their Informations, we ſhall make it appear that the Priſoner at the Bar was the Ring-Leader of thoſe Tumultuous and Rebellious Perſons, that aſſembled the firſt of *March* laſt; firſt to pull down the Meeting-Houſes in the Neighbourhood, and after burning them, went on to pull down others.

The immediate Deſign which they pretended was, the pulling down the Meeting-Houſes, that is, thoſe Places which are allowed to ſuch as are unhappy enough to diſſent from the Church of *England*, to meet in for their Religious Worſhip.

Whether Mr. *Burgeſs* has given any Offence to the Priſoner, or whether any of the Congregation have given him any Offence, we ſhall hear from himſelf; but no Provocation can juſtify ſuch Rebellious Tumults as were made on this Occaſion: The Pretences that are mentioned, will not excuſe what the Law makes High-Treaſon.

It will be in vain for the Priſoner at the Bar, or any Perſon in his Circumſtances, to pretend that he is a Friend to the Government, or a Loyal Subject, when his Actions ſhew he is guilty of High-Treaſon. The Priſoner at the Bar ſtands doubly obliged to bear Faith and true Allegiance to Her Majeſty, not only as all good Subjects are obliged to it, but as he is a Menial Servant to Her Majeſty, for you will find that he was, at the time he committed this Treaſon, in Her own Cloth, wearing Her own Badge, whilſt he was thus acting in Rebellion againſt Her.

That this tumultuous Meeting was not accidental, will appear, when the Witneſſes ſhew, That ſome Days before this, there had been great Diſorders in the Streets: And the Night before, you will find by our Witneſſes, that a great diſorderly Tumult was in the *Temple*, and there it was reſolved upon, by thoſe tumultuous Perſons, that the Night following they would pull down Dr. *Burgeſs*'s Meeting-Houſe, and all the other Meeting-Houſes thereabout. You will find, this was not only talk'd of, but put in Execution, by the Priſoner, and others with him: For, the Firſt of *March*, they ſaw the Priſoner, and about Five Hundred others, with Staves, and Clubs, and other Weapons, in the Indictment mention'd, both offenſive and defenſive; there they were levying War, as the Law expounds it. And tho' the Darkneſs of the Night would otherwiſe have conceal'd him, yet the Fire they made in *Lincoln's-Inn-Fields*, with the Materials of that Meeting-Houſe, did afford Light enough for the Witneſſes to give an Account of the Priſoner: How he ſeemed more forward than all the others; and that he was not content with doing the Miſchief he deſign'd there, but afterwards, as Head of the Mob, commanded them to go and aſſiſt at another, and they went with him, through *Queen-Street*, to *Drury-Lane*, to another Fire, that was made by another Company.

We ſhall ſhew, that it was not only at theſe Two Places, but that it was a general Deſign, to pull down all the Meeting-Houſes at that time. And when we have made out this General Intention, and that it was executed in this manner, we don't doubt, but you will all be ſenſible, that this Proſecution was very requiſite: For it is the Intereſt of every honeſt Man to put an End to theſe Tumults and Diſorders, be their Opinions what they will. It is the Intereſt of all People (in order to enjoy what God has bleſſed them with, be it more, or leſs) to put an End to theſe Diſorders: For theſe are like the great Tumults of Waters, that bear down all before them. Wherever theſe things are, all the Burglars and Robbers, and ſuch People, join with them to do Miſchief.

We will call our Witneſſes, and give an Account of what relates to the Priſoner, and they will make it appear, that he was chiefly concern'd in this Inſurrection; and not only acted in *Lincoln's-Inn Fields*, but in other Places.

Mr. Sol. Gen. My Lord, The Facts that have been open'd by *Mr. Attorney*, we take to be fully and plainly Rebellion, and High-Treaſon: I ſhall not therefore trouble your Lordſhip with ſaying any thing more of the Facts, but only ſhortly ſtate the Courſe of our Evidence.

We ſhall ſhew that there was a Deſign, the Day before theſe Meeting-Houſes were pull'd down, to pull them down: That the next Day that Deſign was put in Execution: That the Priſoner was the moſt active among them, and took upon him to be the Leader, and Captain of the Mob, on that Occaſion. And if this be made out, I hope it will give your Lordſhip, and the Jury, full Satisfaction, that he is Guilty of the Crime laid to his Charge in this Indictment.

Call *Thomas Tolboy. (Who was Sworn.)*

Mr. Att. Gen. Pray, give my Lord, and the Jury, an Account what you know of the Deſign and Intention of pulling down Meeting-Houſes, and when, and where it was.

Mr. *Tolboy.* My Lord, I was paſſing through the *Temple*, on *Tueſday* Night, where I ſaw a great Mob: I heard them conſult of demoliſhing the Meeting-Houſes the next Day.

Mr. Att. Gen. What Meeting-Houſes did they talk of?

Mr. *Tolboy.* 'Twas Mr. *Burgeſs*'s in *Lincoln's-Inn-Fields.*

Mr. Att. Gen. Was you among them?

Mr. *Tolboy.* No; I was paſſing through the *Temple*, and heard them talking as I paſs'd.

Mr. Sol. Gen. How many were there together at that time?

Mr. *Tolboy.* I believe there were ſome Thouſands.

Mr. Sol. Gen. When were they to be pull'd down?

Mr. *Tolboy.* Some were for pulling of them down then, and ſome were for leaving of them 'till the next Night, and others were for leaving of them alone, 'till the Event of Dr. *Sacheverel*'s Trial.

Mr. Sol. Gen. What was the Occaſion of the Meeting of that Mob that talk'd of this?

Mr. *Tolboy.* I don't know that.

Mr. Sol. Gen. Do you know that *that* Meeting-Houſe was pull'd down?

Mr. *Tolboy.* Yes, I know it was pull'd down.

Mr. Sol. Gen. Did you ſee it?

Mr. *Tolboy.* No, I did not ſee it, I only heard ſay ſo.

Mr. *Whittaker.* Did you ſee the Priſoner at the Bar in that Company, in the *Temple?*——Mr. *Tolboy.* No.

Mr. *Whittaker.* When you overheard them, were they talking low, or loud?

Mr. *Tolboy.* It was loud.

Mr. *Whittaker.* How came you not to give Information of it to ſome Magiſtrate?

Mr. *Tolboy.* It was known before; they had broke the Windows the Night before.

Mr. *Darnell.* Do you know any particular Perſon, that expreſs'd himſelf for pulling down the Meeting-Houſes?——Mr. *Tolboy.* No.

Mr. *Darnell.* Who then did you hear ſay there was ſuch a Deſign?

Mr. *Tolboy.* I heard ſeveral.

Mr. *Darnell.* Then you don't know any one?——Mr. *Tolboy.* No.

Mr. *Darnell.* Then you only expreſs yourſelf, that you heard the Mob ſay ſo?

Mr. Att. Gen. We don't call this Witneſs to ſpeak in particular againſt the Priſoner, but to ſhew, that theſe People reſolved among themſelves, to pull down the Meeting-Houſes.

L. C. J. You ſay you was paſſing through; You did not make any long Stay, did you?

Mr. *Tolboy.* No, my Lord.

L. C. J. Were they come to a Concluſion of the Diſcourſe of pulling them down? Or did you leave them talking of it?

Mr. *Tolboy.* I left them talking of it.

Mr. Sol. Gen. He ſaid there was an Intimation of it on *Monday* Night, I deſire to know how he knew or heard of it?

Mr. *Tolboy.* You know the Windows were broke on *Monday* Night.

Mr. Sol. Gen. Did you ſee them?

Mr. *Tolboy.* No, but I heard ſo.

Mr. Sol. Gen. Who told you ſo?

Mr.

Mr. *Tolboy*. It was a Man that lives in the Houſe with me.

Lord Chief Baron. What were they met about?

Mr. *Tolboy*. They were the Mob that accompanied Dr. *Sacheverel* home to the *Temple*.

Then Captain Edward Orrel *was ſworn*.

Mr. Att. Gen. Pray look on the Priſoner at the Bar, and give an Account of all you know of this Riot, and how he was concerned in it.

Capt. *Orrel*. My Lord, I heard there were ſeveral Diſturbances on *Monday* Night: On *Tueſday* Night I was at a Coffee-Houſe, where there were ſeveral Houſe-keepers: When I was there, there was News brought, that they had pulled down Mr. *Burgeſs*'s Meeting-Houſe.

Mr. Att. Gen. Who?

Capt. *Orrel*. The Mob that came with Dr. *Sacheverel*. Pray, ſays I to Mr. *Leonard*, who keeps the Coffee-Houſe, (he is one of that Congregation) pray ſtep up and ſee the Truth of it, and whether you can do him any Service: You will find his Son, and, perhaps, he will put you into a Way to put a Stop to it. He went up to Mr. *Burgeſs*'s, and found that they had broke the Windows of his Houſe, and Meeting-Houſe; and after they had done that, they went off. From thence he went to Mr. *Burgeſs*'s Son, and, I ſuppoſe, he went to the Secretary of State. On *Wedneſday* I went to *Weſtminſter-Hall*, with ſome Neighbours, and went into *Oliver*'s Coffee-Houſe, where I ſtaid ſome time, and afterwards ſaw Her Majeſty return through the Park to St. *James*'s. There were ſeveral Papers diſperſed about a Prize-Fighting; I thought they had been the common Papers that are diſperſed about ſuch Prizes, but I found it was about a Prize between *Sacheverel* and *Hoadly*. When I returned, I went to the ſame Coffee-Houſe, and when I had been there about half an Hour, heard that the Mob were gone from the *Temple* to Mr. *Burgeſs*'s Meeting; ſays I, to ſome of my Friends there, I will ſtay no longer here; the leaſt we can do is to endeavour to keep the Peace: I will go up, and ſee what is doing. Accordingly I went, and one Friend with me: I went to the Houſe, to offer to do him what Service I could, though I do not belong to him. When we came firſt, my Friend was fearful: Said I, I will go into the Meeting-Houſe. I met ſeveral that aſſaulted me, and made me pull off my Hat. When I came into the Meeting-Houſe, I ſaw them pulling it down; ſeveral Gentlemen, in very good Habits, I believe twenty or thirty, were buſy in pulling down the Pews; and I obſerved a little Man in the Pulpit very buſy, pulling it down: I took particular Notice of him, but could not ſee him among the Priſoners that have been taken. I came out, and told my Friend, that it was all deſtroyed. We ſtaid a little while at the Corner of the Street, and then I went in again: I went in ſeveral Times, 'till ſome of them, that were pulling up the Boards, ſwore at me, and ſaid, Damn him, What does that lazy Fellow do? And I believe, they took me for a Spy. I went again to the Coffee-Houſe, and gave this Account to my Neighbours, and preſently News was brought, that they were gone to ſeveral other Meetings. We went out again, and went round by *Fetter-Lane*. I ſaw the Conſtable and the Watch were very much inſulted. I ſpoke to the Conſtable: He ſaid, I wiſh I could do any Service; but we have our Lives in their Hands; we dare not do any more, we have been ſo much abuſed. I went into *Holborn*, and ſaw the Fire lighted, and went round at a diſtance, and ſaw ſeveral Pieces of Timber thrown into it. From thence we went again to *Lincoln's-Inn-Fields*; there I heard ſome aſking, Which was the Lord *Wharton*'s Houſe? Others ſaid, St. *James*'s: No, ſaid others, the City, the City, the Bank: Damn them, ſays another, we will have all the Meeting-Houſes down. We walked down that Row where Sir *Francis Child*'s Son's Houſe is, and went towards my Lord Chancellor's Houſe: I ſaw a Chariot ſtanding at his Door; ſaid I to my Friend, I believe here is ſomebody from Court, I hope there will be ſome Guards come down by and bye. When I was there, I halted a little, and obſerved a ſmall Body of the Mob detached from that Fire; they run after one another, croſs the Fields: I obſerved a pretty tall Man at the Head of them; I kept my Eye on that Party. In the middle of the Field they grew ſtronger, and then they divided themſelves; ſome went towards the Arch, but more towards *Powis* Houſe: I went towards thoſe at *Powis* Houſe, and there I ſaw *Dammaree* in the Queen's Livery, with his Badge; and there they held a Council of the Mob, as I called it. God damn it, ſays *Dammaree*, we will have them all down. Some were for going into *Wild-ſtreet*; Damn it, ſays another, that's a Hen-Rooſt, the other is worth ten of it: Says *Dammaree*, I'll lead you on, Boys; Huzza! High-Church and *Sacheverel!* God damn them all, we will have them all down. Some of them turned off towards *Wild-ſtreet*, and others towards *Powis* Houſe. *Dammaree*, and the Mob with him, went through *Queen-ſtreet*, and once in ten or twelve Yards, he turned about, Huzza! Why don't you come on, Boys, to *Drury-lane?* God damn them, we will have them all down. I called to him, and ſaid, How now, *Dammaree?* He turned about, Huzza! Come along, Boys: but he made me no Anſwer. In this Manner, he led them on from *Lincoln's-Inn-Fields* to *Drury-Lane*, but I never ſaw him afterwards. By-and-bye comes a little Fellow; I'll make way, ſays he; and, with a Pick-Ax, which he had in his Hand, endeavoured to break open the Meeting-Houſe Door, and was working with it at the Bottom. Afterwards, while he was working at the Door, comes another Man, one *Henry Sanders*, about my Size, or a little higher; he had a Hatchet in his Hand: He comes up, and ſwears, God damn you, you break open a Meeting-Houſe! You don't know how to do it; and, with the ſecond or third Stroke, he broke thorough. I ſtood cloſe by him, laid my Hands upon him, and looked upon him, while he broke open the Door, and made the beſt Remarks I could of him: I have ſeen moſt of the Priſoners, but could not find him among them; but, at laſt, was informed, that he was Apprentice to one *Wallis*, a Sawyer, in *Parker's-Lane*.

Mr. Att. Gen. It is no matter to give an Account of him: I aſk, When they had broke open the Door, what did they do next?

Capt. *Orrel*. I went into the Meeting-Houſe with them, and aſked, Where is *Jolly*, the Queen's Waterman? Says one, He is gone to the Back-Door: No, ſays another, he is gone to my Lord *Wharton*'s. But I never ſaw *Dammaree* after that.

Mr. Soll. Gen. You ſay, he led them from the Fire at *Lincoln's-Inn-Fields?*

Capt. *Orrel*. I obſerved him firſt there, but did not know him, 'till they came near the Arch, and there they conſulted together, which way to go; and by that time they came to *Drury-lane*, I believe there were two or three Thouſand of them.

Mr. Att. Gen. At *Drury-lane*, you ſay, there was a Tumult of two or three Thouſand; pray obſerve the Priſoner, and tell us, whether you are ſure, that he is the Man that headed the Mob at the Arch in *Lincoln's-Inn-Fields*, and led them to *Drury-lane?*---Capt. *Orrel*. Yes, he is.

Mr. Sol. Gen. What happened afterwards? Did any Guards come? And was there any Oppoſition given to them? Or did they diſperſe themſelves?

Capt. *Orrel*. My Lord, I was in *Drury-lane* half an Hour and more. My Friend had been ſome time in a Houſe, and after we had heard all this Noiſe, Well, ſays I, I will go to my Neighbours at the Coffee-Houſe, and acquaint them what has happened. As we were going into *Lincoln's-Inn-Fields* we met a Detachment of the Horſe-Guards: I went up to the Captain; Sir, ſays I, this is the beſt Way, through the Arch, for there is a very great Mob: I run back along with them. As ſoon as they came, they halted at *Great Queen-Street*. There came another Detachment of the Horſe-Grenadiers, and met them, and both joined. After they had drawn themſelves up in one Line, the Officer commanded them to ride among the Mob, and diſperſe them, which they did; but were very favourable, and ſtruck them with the Flats of their Swords. After this, a Fellow drew his Sword, and got under a Bulk; I ſtepped up to him, and as ſoon as I came up, Sir, ſays I, What the Devil are you doing? I ſaw two or three Grenadiers ſtrike him with the Flats of their Swords: He ſtood with his drawn Sword, and pricked at two or three Horſes, not ſo as to do them any Harm.

Mr. Soll. Gen. Don't go into the Particulars relating to that Man; but tell us, Did you ſee any other Tumult?

Capt. *Orrel*. I went down with the Grenadiers and Life-Guard to *Black-Friers*.

Mr. Sol. Gen. Was any Oppoſition given to the Guards at *Drury-lane?*

Capt. *Orrel*. None by *Dammaree*, nor to the Horſe-Guards, as I ſaw.

Mr. Sol. Gen. Was there any to the Grenadiers?

Capt. *Orrel*. There was Oppoſition; for I ſaw a Sword drawn, and the Officer aſſaulted, and he ſwore, God damn them, he would fight the beſt of them.

Mr. Sol. Gen. Do you know of any other Meeting-Houſes that were pulled down that Night?

Capt. *Orrel*. I went to the Guards, and told them that I heard ſome of the Mob were gone into the City; ſome ſaid to the *Bank*; ſome ſaid to Mr. *Shower*'s, and others ſaid to other Places. I went to them; Gentlemen, ſays I, it is better to have all the Meeting-Houſes deſtroyed than the *Bank*, pray let us go thither: I went along with them down *Holborn*, and brought them up *Fleet-lane*; there I heard they were not gone to the *Bank*, but that they were gone to *Black-Friers:* I ſhewed them the Way, and went down with them almoſt to the Meeting-Houſe, and ſhewed them where it was.

Mr. Sol. Gen. Was that Meeting-Houſe pulled down?

Capt. *Orrel*. It was then pulling down, but it was prevented by the Guards.

Mr. Sol. Gen. Then you ſpeak as to Mr. *Burgeſs*'s, and the Meetings in *Fetter-lane*, *Drury-lane*, and *Black-Friers?*---Capt. *Orrel*. I was at them all.

Mr. *Whittaker*. Pray, What Time of Night was it that you ſaw Mr. *Dammaree?*

Capt. *Orrel*. I can't be poſitive, but I believe it was about half an Hour after Ten.

Mr. *Whittaker*. Pray, In what Condition was he?

Capt. *Orrel*. I did not much obſerve it; I believe he had been drinking, he looked fluſhed.

Mr. *Darnell*. I think you ſay, you was in Mr. *Burgeſs*'s Meeting-Houſe, and ſaw ſeveral there pulling it down; Now, did you ſee *Dammaree* there?---Capt. *Orrel*. No.

Mr. *Darnell*. Did you ſee *Dammaree*, 'till you came to the Fire?

Capt. *Orrel*. No, nor at the Fire.

Mr. *Darnell*. Did you ſee him at the Meeting-Houſe in *Drury-lane?*

Capt. *Orrel*. No; nor did I ſee him after he had brought up that Party through *Queen-ſtreet:* But I believe him to be the chief Perſon that led them from *Lincoln's-Inn-Fields* to *Drury-lane*.

Damm. When I was in Gaol, you aſked me, Whether I was the Waterman? Yes, I am, ſaid I, Do you know me? If you are the Waterman, ſaid you, I do.

L. C. J. If you have a mind to aſk him any Queſtions, you may.

Damm. I deſire to aſk him, Whether he ſaw me in any of the Meeting-Houſes?

Capt. *Orrel*. I ſaid before, I did not. My Lord *Sunderland* deſired me to ſee the Priſoners in *Newgate*; I did ſo: When I came, they were in a dark Hole. I deſired to ſpeak with *Dammaree* and *Purchaſe*; and as ſoon as we went into a lighter Room, I knew them both.

Then Joſeph Collier *was ſworn*.

Mr. Sol. Gen. Do you know the Priſoner at the Bar? Tell us, whether you ever ſaw him before, and where?

J. Collier. My Lord, I ſaw him at the Fire, at *Lincoln's-Inn-Fields*.

Mr. Sol. Gen. What Time?---*J. Col*. About Eight or Nine o'Clock.

Mr. Sol. Gen. What Day?

J. Col. *Wedneſday*, the Firſt of *March* laſt; I ſaw him bring the Branch that holds the Candles.

Mr. Sol. Gen. Where had he it---*J. Col*. In Dr. *Burgeſs*'s Meeting.

Mr. Sol. Gen. What did he do with it?

J. Col. He went two or three Times round the Fire, and then threw it in.

Mr. Sol. Gen. What did he do beſides?

J. Col. He hallooed, and threw up his Hat and Wig ſeveral Times.

Mr. Att. Gen. Where did you ſee him firſt?

J. Col. In *Lincoln's-Inn-Fields*.

Mr. Att. Gen. Did you go into the Meeting-Houſe?---*J. Col*. No.

Mr. Att. Gen. Where did you see him with the Branch?
J. Col. Just at the End of the Alley.
Mr. Att. Gen. Did you see him come out of the Meeting-House?
J. Col. I did.
Mr. Att. Gen. And you saw in his Hand the Branch?—*J. Col.* Yes.
Mr. Att. Gen. Where did he carry it?
J. Col. He carried it to the Fire.
Mr. Att. Gen. What did he do then?
J. Col. He went about hallooing for *Sacheverel*, and went round the Fire two or three Times, and then threw it in.
Mr. Sol. Gen. What was that Fire made of?
J. Col. It was made before I came.
Mr. Sol. Gen. How long was he there?
J. Col. I believe two or three Hours.
Mr. Sol. Gen. When did he go away?—*J. Col.* He went before the Guards, and led the Mob off to *Drury-Lane*.
Mr. Sol. Gen. How do you know he led them off?
J. Col. He said, Let us go to *Drury-Lane*, and he went with them, and I saw them go up *Great Queen-Street*.
Mr. *Thomson.* What Sort of Cloaths had the Prisoner that Night?
J. Col. His Waterman's Coat and Badge.
Mr. Sol. Gen. Who appeared to be the most active Man at the Fire?
J. Col. The Waterman; he that stands there.
Mr. *Thomson.* Do you know of any Thing else fetched by this Man, besides the Candlestick?—*J. Col.* No.
Mr. *Whittaker.* What Time of Night did you first see *Dammaree?*
J. Col. I believe it was near Nine.
Mr. *Whittaker.* Will you be positive it was about that Time?
J. Col. It was about Nine, or Ten.
Mr. *Whittaker.* Will you be positive it was before half an Hour after Ten?—*J. Col.* I cannot be positive to half an Hour.
Mr. *Whittaker.* Was not the Meeting-House pulled down before you saw *Dammaree?*—*J. Col.* Yes, there was a Fire before.
Mr. *Whittaker.* What Time was that?—*J. Col.* It was about Nine.
Mr. *Whittaker.* If the Meeting-House was pulled down, did not they take out the Candlestick at first, before they pulled it down?
J. Col. No, there was a great Fire before they brought it away: I was not there at the Beginning.
Mr. *Darnell.* You say you came after the Fire was lighted, and there you saw *Dammaree*, but you did not go into the Meeting-House; how then can you say he was in the Meeting-House?
J. Col. Because I stood at the End of the Alley, and saw him come out.
Mr. *Darnell.* Why, were there any Lights there?
J. Col. Yes; the Alley was very full of Lights, and the Meeting-House too.
Juryman. My Lord, I desire he may be asked, Whether he saw *Dammaree* bring that Branch out of the Meeting-House?
Mr. Att. Gen. What did you see him bring out of the Meeting-House?
J. Col. The Branch.
L. C. J. Could you see the Door of the Meeting-House where you stood?—*J. Col.* Yes.
L. C. J. Did you see him bring that Branch out of the Meeting-House?
J. Col. Yes; and I saw him throw it into the Fire.
Mr. *Darnell.* Was you near the Door?—*J. Col.* As near as I am to you.

Then John Still *was sworn.*

Mr. Att. Gen. Look upon the Prisoner, and see if you know him.
J. Still. Yes, I do know him.
Mr. Att. Gen. Where, and when did you see him?
J. Still. The Night that the Fire was, I saw him in the Alley, that leads to Mr. *Burgess*'s Meeting-House.
Mr. Att. Gen. Where was you?—*J. Still.* Just in the Alley.
Mr. Att. Gen. Where was he going, or from whence was he coming?
J. Still. They were all standing and hallooing.
Mr. Att. Gen. Did you see him do any thing more?—*J. Still.* No.
Mr. Att. Gen. What time was it?
J. Still. It was, as near as I can guess, about Eleven.
Mr. Sol. Gen. Was the Meeting-House down, or not?
J. Still. I cannot tell; there was such a Crowd, I could not get to it.
Mr. Sol. Gen. Was you at the Fire?
J. Still. Yes, but I did not see him there.
Mr. Sol. Gen. Did you hear him say any thing?
J. Still. Nothing, but only halloo.

Then John Mitchell *was sworn.*

Mr. Sol. Gen. Was you at the Fire in *Lincoln's-Inn-Fields* the first of *March* last?---*J. Mitchell.* Yes.
Mr. Sol. Gen. Do you know the Prisoner?---*J. Mitchell.* Yes.
Mr. Sol. Gen. Where did you see him?
J. Mitchell. I saw him that Night at the Fire.
Mr. Sol. Gen. What did he do there?
J. Mitchell. I only saw him run about the Fire, and halloo.
Mr. Sol. Gen. Where had they the Wood for that Fire?
J. Mitchell. From Dr. *Burgess*'s Meeting-Place.
Mr. Sol. Gen. Did you see any Wood brought from thence?
J. Mitchell. No; it was all laid there before I saw it.
Mr. Sol. Gen. Was you at the Meeting-House?---*J. Mitchell.* No.
Mr. Sol. Gen. Was you there when he went from the Fire?
J. Mitchell. No.
Mr. Att. Gen. What time was it that you saw him there?
J. Mitchell. About Eleven.
Mr. Sol. Gen. Pray, who appeared the most active Person there?
J. Mitchell. I don't know, they were all active.
Mr. *Thomson.* Did you hear him say any thing to the Mob?
J. Mitchell. No; only halloo.
L. C. J. Did they force him to holloo, as he did?
J. Mitchell. No; there was no forcing of him.
Mr. Sol. Gen. Did he act as a Man that was forced to halloo? or as one that did it willingly?
J. Mitchell. My Lord, he had no Occasion to halloo unless he would.
Mr. *Whittaker.* What Time of Night was this?
J. Mitchell. About Eleven.
Mr. *Whittaker.* Was you there when the Mob went away to *Drury-Lane?*---*J. Mitchell.* No.

Then Francis Morgan *was sworn.*

Mr. Att. Gen. Pray look upon the Prisoner at the Bar, and tell us if you know him.
F. Morgan. My Lord, the first of *March* last, at about Ten in the Evening, I heard there was a Tumult in the City: I live in *Southwark*, and I came over the Water, with another Person, to see what it was that occasioned it. I came to Dr. *Burgess*'s Meeting-House, where I saw a great Number of Persons pull it down. After I had viewed them there a-while, I went to *Lincoln's-Inn-Fields*, and I saw them make a Bonfire; and there I saw this Man in the Queen's Livery, as a Waterman; he excited the Mob very much in their Proceedings, and I saw him pull off his Wig, and halloo, and seemed mightily to be rejoiced: He went round the Fire, with several other Persons, that had Staves in their Hands. I did not see him have any, but he had his Wig in his Hand; he walked round the Fire with them, in Procession, with a Bedstead that was going to be thrown in.
Mr. Att. Gen. You say it was ten o'Clock at Night when you came there first; was the Fire kindled then?---*F. Morgan.* Yes.
Mr. Att. Gen. Did you see *Dammaree* there when you first came?
F. Morgan. I did see him: I did not then know his Name; but that is the Man. I took Notice of him, because of his Livery.
Mr. Sol. Gen. Where had they the Materials for that Fire?
F. Morgan. I saw a great many bring Wood from the Meeting-House: I said to some of them, Gentlemen, what are you doing? The Guards are coming. Said they, Damn the Guards, and the Parliament too; we are ready to face them all.
Mr. Sol. Gen. Why did they curse the Parliament?
F. Morgan. I don't know that.
Mr. Sol. Gen. Pray who seemed to be the most active Man, and Inciter of them?
F. Morgan. The principal Man I observed was the Prisoner at the Bar, whose Name I understand since to be *Dammaree.*
Mr. Sol. Gen. How long did you stay at the Fire?
F. Morgan. About half a quarter of an Hour, and then I heard them enquire, Where is the Fellow that said the Guards were coming; so I got away as fast I could, for I came over the Water in my Night-Gown.
Mr. Sol. Gen. Was *Lincoln's-Inn-Fields* the only Place you came to?
F. Morgan. I saw no other Fire; I came to the Meeting-Place first, and saw them pull it down, and then went to the Fire, which was very great, and I saw the Prisoner encourage them in bringing Things to throw in: I saw him walk round the Fire, and several about him with Sticks in their Hands; but as to him, I observed none in his Hand.
Mr. Att. Gen. How many People do you think might be there at that Time?
F. Morgan. I believe two Thousand.
Damm. What Time of Night was this?
F. Morgan. About half an Hour after Ten, or Eleven.
Damm. Well, my Lord, I am very well satisfied.
Mr. *Thomson.* You say you saw a Procession before the Bedstead was thrown in? Did you see any Thing else that was thrown in?
F. Morgan. Yes, the Doors of the Meeting-House.
Mr. *Thomson.* Was there any Procession, or Hallooing before them?
F. Morgan. Yes, and I saw abundance of other Materials thrown in.
Mr. *Thomson.* Did they make the same Procession before all of them?
F. Morgan. No, not before all.
Damm. Did you see me throw any Thing in?---*F. Morgan.* No.
Juryman. Did you apprehend him to be drunk, or sober?
F. Morgan. I did not apprehend him to be disguised in Drink: I took him to be rather a Madman, than any thing else.
Juryman. Did you see him with any of the Mob, between the Meeting-House and the Fire?
F. Morgan. The Mob was so large, as to extend from the Meeting-House to the Fire; there were great Numbers running to and again, but I saw him at the Fire.

Then John Eaton *was sworn.*

Mr. Att. Gen. Pray give an Account of what you know of this Outrage, and of the Prisoner at the Bar.
John Eaton. I saw him at the Place where the Fire was.
Mr. Sol. Gen. Was you there at the making of the Fire?
J. Eaton. No.
Mr. Sol. Gen. What was the Fire made of?
J. Eaton. Of the Wood brought from the Meeting-House; I went to the Meeting-House with the Gentleman that was up before.
Mr. Sol. Gen. What did you see brought out?
J. Eaton. I saw a great many People bring out Pieces of Board.
Mr. Sol. Gen. Did you see the Prisoner bring any thing out?
J. Eaton. No, I only saw him at the Fire.
Mr. Sol. Gen. How did he behave himself there?
J. Eaton. Hallooing, as the rest of the Mob did.
Mr. Sol. Gen. What Ceremony did they use to the Timber before they threw it in?
J. Eaton. They hallooed when they threw it in.
Mr. Sol. Gen. Did they walk round the Fire with any?
J. Eaton. Yes, with the Bedstead.

Mr. Sol. Gen. Who did appear to be the moſt active?

J. Eaton. There were many as active as he; but he was very active.

Mr. Sol. Gen. Pray what Condition was he in; drunk or ſober?

J. Eaton. I am no Judge of that.

Mr. Att. Gen. There can be nothing in that; no Weight can be laid upon it.

Mr. Sol. Gen. There is nothing in it: If any one kills a Man when he is drunk, he muſt be hanged when he is ſober.

Damm. I deſire he may be aſked what Time of Night it was.

J. Eaton. It was about half an Hour after Ten.

Mr. Sol. Gen. Did you ſee any Soldier there?

J. Eaton. Yes, one that looked like a Soldier.

Mr. Sol. Gen. What paſs'd between them?

J. Eaton. He, and ſome others, forced the Soldier to pull off his Hat.

Mr. Sol. Gen. Did you ſee *Dammaree* with them that forced him to pull off his Hat?

J. Eaton. Yes.

Mr. Sol. Gen. Did you ſtay till he went away, or did you leave him there?

J. Eaton. I left him there.

Mr. *Thomſon.* Did you hear him ſay any thing to that Soldier?

J. Eaton. I heard him ſay, Pull off your Hat.

Mr. *Darnell.* You ſay you ſaw ſeveral Perſons bring out Materials: How many might there be?

J. Eaton. I can't tell; but there were a great many.

Mr. *Darnell.* Did you ſee *Dammaree* bring any thing out?

J. Eaton. No.

Mr. *Darnell.* Where was he?

J. Eaton. I ſaw him firſt at the Fire, and I left him there.

Mr. Att. Gen. My Lord, there was a Queſtion aſked by the Counſel for the Priſoner, which we did not then oppoſe; but we muſt be in your Lordſhip's Judgment, whether it can have any Regard to the Merits of this Cauſe. For admitting he was drunk to that Degree they would have it, that is no excuſe of his Crime; I don't find they clear that Matter up: But if it be ſo, it is no Excuſe for Felony or Treaſon. The only Queſtion is, Whether he was not aſſiſting in this Tumult?

L. C. J. It is almoſt neceſſary, that when a Man goes upon ſuch Actions, he ſhould be in Drink; and I don't know but a little more Drink might have carried him to St. *James*'s, to have pulled that down.

Mr. Att. Gen. My Lord, we have done with our Evidence for the Queen.

Mr. *Whittaker.* May it pleaſe your Lordſhip, and Gentlemen of the Jury, I am of Counſel for the Defendant: The Defendant ſtands accuſed of a very high Crime; it is Treaſon, and levying War againſt the Queen, under whoſe Government we are the happieſt People in the World. And I agree with the Gentlemen that are of Counſel with her Majeſty, that a Proſecution of this Nature is very neceſſary, if theſe tumultuous Actions amount to levying War; and that no Tumults are to be borne. But the Queſtion is, What Share the Priſoner had in this Tumult? I agree theſe Tumults are not to be endured in any Civil Society, nor will any body, I believe, ſay, that thoſe Methods are to be taken with, or any Injuries whatever to be uſed to, the Diſſenters. The Law is their Protection as much as of any other Subjects of this Kingdom: Ill Ways of Force and Violence towards the Diſſenters are unjuſtifiable, and theſe Ways are abominable; and no ſuch vile and baſe Methods are to be uſed towards them. But that which we inſiſt on, is, that the Priſoner had no Share of Guilt in the Action, and if ſo, then there will be no Colour to ſay, that he is guilty of a Riot, much leſs of levying War.

I beg leave juſt to ſtate what has been ſworn againſt him, and then apply myſelf to give it an Anſwer. The firſt Witneſs was only to prove that there was a Deſign, and that the Witneſs heard a Rumour among a great many People in the *Temple*, to pull down the Meeting-Houſe of Mr. *Burgeſs*; but he did not ſee *Dammaree* there, nor is it proved that Mr. *Dammaree* was any ways privy thereto: And we ſhall ſhew that he was innocent of any ſuch Deſign. The next Witneſs is *Orrel:* He ſpeaks directly to the Priſoner at the Bar; but I would obſerve that he does not ſpeak to him till half an Hour after Ten, when he finds him in *Lincoln's-Inn-Fields*, at the Fire of the Materials of Mr. *Burgeſs*'s Meeting-Houſe. Indeed he does ſpeak as to his having ſome Share in the Diſorders of the Mob; but we ſhall ſhew that he was not a voluntary Agent in that Matter, and if ſo, that will ſufficiently account for, and thereby we ſhall anſwer the Evidence given by him. The next is *Collier:* We will ſhew him to be under a groſs Miſtake, and that it is impoſſible that what he ſwears can be true: He confines himſelf to about Nine o'Clock, when this Action of carrying out the Branch, and throwing it into the Fire with ſuch a formal Proceſſion was. We ſhall ſhew where the Defendant was till half an Hour after Ten; and that it is impoſſible for him to have the leaſt Hand in plundering or demoliſhing the Meeting-Houſe: And if that be anſwered, we think it will go a great way towards clearing him of this Charge. The other Witneſſes only ſpeak to his being among the Rabble, hallooing amongſt them: If we give an Account how the Priſoner came to be there, and that he was under a Neceſſity to do as he did, and that it was a perfect Accident, we hope the Imputation of any Crime for his being an Actor in this Matter, eſpecially Treaſon, will not be laid to his Charge.

The Priſoner's Caſe was this: On *Wedneſday* Morning he had occaſion to apply to the Officers of the *Blue-Coat-Hoſpital* for a young Fellow that he had a mind to have for his Apprentice: He was with the Beadles from Ten in the Morning till about Two o'Clock, and indeed he might have better employed his Time, for they were all that while at an Alehouſe drinking. After this, he falls into Company with one *Wood*, with whom he continued at another Alehouſe, till after Ten o'Clock at Night. As they were drinking, there came a Report that there was a Fire in the *Strand*. The Priſoner and the reſt of the Company were ſurprized, and got up; ſays the Priſoner, There is a Lady I ſerve with Coals, that lives in the *Strand*, I muſt go and take care of her: He comes out of *Water-Lane* into *Fleet-Street*, and there he was ſtopped, and ſtood and talked ſome ſhort Time, and finding there was no Fire in the *Strand*, he was going ſtrait home; he thought the *Strand* was a troubleſome Place to go through then, and therefore choſe to go the Backway. His Companion, Mr. *Wood*, went with him; but he being in a better Condition than *Dammaree*, he got rid of the Mob. But we ſhall prove that the Priſoner was under a Force, and by ſome of the Mob dragged into the midſt of them: And you obſerve by the Witneſſes againſt the Priſoner, that they treated every Body as Spies that did not join with them; and when he was in the Power of theſe unruly People, and acted under ſuch Force, no one can ſay he was a Criminal. And there is no Pretence to ſay, that this Man was over-night, or at any time before, in any Deſign, or was acting with the tumultuous Perſons the Night before, but by mere Accident came in among them at Night, on the firſt of *March*. If he did miſbehave himſelf there, yet we hope the Court and the Jury will be of Opinion that he was not a criminal Actor in that Caſe.

If the Defendant ſhould be ſo unfortunate to be looked upon as a criminal Actor, yet we hope the Fact will not amount to more than a Riot, and not to levying War, nor be High-Treaſon. I ſhall not take up your Lordſhip's Time at preſent in ſpeaking to that Point, till we have called our Witneſſes, when we ſee how the Matter then ſtands. If any Guilt ſhould appear againſt him, or the Fact be doubtful whether he was a willing Agent in theſe Irregularities or no, the Queſtion will then be proper, Whether it amounts to levying War, or not? We will call our Witneſſes, and hope that *that* Point ſhall be reſerved to us.

Mr. *Darnell.* My Lord, I beg a few Words on the ſame Side: As this Indictment charges the Priſoner with levying War, there muſt be a Proof of ſuch Facts as do amount to a levying of War. The Witneſſes for the Queen have ſworn, that the Priſoner was at the Fire in *Lincoln's-Inn-Fields*, and that he there did halloo and throw up his Hat. I believe that muſt be agreed, for my Inſtructions are that he did ſo, and our Witneſſes will all ſay as much. But if that were all, then the Witneſſes againſt the Priſoner muſt be equally Guilty: For the Chief of them, *Orrel*, ſays, he was forced to pull off his Hat, and it was known to be the Practice of the Mob that Night, to make all that paſſed by pay Obedience, as they called it, to Dr. *Sacheverel*, and High Church. But, My Lord, that which I humbly offer on behalf of the Priſoner, is, that unleſs he were in the Intention of pulling down the Meeting-Houſes in general, and did ſomething in Execution of that general Intention, it will not be a levying of War againſt her Majeſty. My Lord, it is obſerved that this Man was at the Fire in his Coat and Badge, and we think a great deal may be inferred from his Habit, that he was not in ſo evil an Intention, as levying War againſt Her Majeſty, whoſe Servant he was ſo remarkably diſtinguiſhed to be; but a Man who had ſuch a vile Deſign to execute, would dreſs himſelf in ſuch a manner as would beſt conceal him: Therefore we think his being preſent at the Fire, and hallooing, and the reſt of the Evidence againſt him, is not enough to prove him in that general Intention, and the Execution of it.

The Gentlemen of the other Side thought it neceſſary to give ſome Evidence of a Deſign to pull down the Meeting-Houſes in general; and for that purpoſe proved that a great Number of People were got together the Night before in the *Temple-Walks*, where there was a Diſcourſe by ſome of them, that they would pull down Mr. *Burgeſs*'s Meeting-Houſe; but who thoſe People were, I don't hear, nor do they by any Means bring that home to the Priſoner. And it is impoſſible for us to give an Anſwer to that Evidence, for to ſay the Mob ſaid ſo, is to ſay that Nobody ſaid ſo; and no Witneſſes can be falſified on ſuch an Evidence, for who that Mob were is not explained. And, my Lord, if there were no Intention, or no general Intention to pull down Meeting-Houſes, we apprehend there can be no levying of War: If the Fact were ſudden and accidental, or only intended againſt a particular Meeting-Houſe, we muſt ſubmit that to your Lordſhip, whether if he were Guilty of that Fact, it would amount to High-Treaſon? We think all the Caſes go on this Foundation, that there muſt be an Intention to commit ſuch like Offence in general; and an Intention to commit it to the particular Injury of a Perſon, or Place, will not be ſufficient. The Witneſſes againſt the Priſoner ſay, there was an Intention, or Diſcourſe of going to Mr. *Burgeſs*'s Meeting-Houſe, and no Talk of any other; but when they were there, then they went to a ſecond, and on to a third: But the original Intent by the Mob, doth not appear to be more than to go to Mr. *Burgeſs*'s Meeting-Houſe, and to pull that down, and therefore is not a levying of War.

The Caſe in Print, in the ſecond *Anderſon*, 66. where the People in *Oxfordſhire* conſpire to aſſemble together, and move others to join them, and to pull down Incloſures, was attended with this Circumſtance, that it was a general Intent; and when they were got together themſelves, they perſuaded others to join with them; they conſpired to go to ſeveral Gentlemen's Houſes, and to take Arms and Horſes, and to kill ſeveral Gentlemen, and then to come to *London*; and their Intent was general, not to pull down any particular Incloſure, but all of them, for the Enlargement of Highways and Commons, and ſo to reform that which the Law ought to do.

So in the ſame Book, in the Caſe of the Apprentices of *London*, 2 *Anderſon*, 4, 5. *For reducing the Price of Victuals in general*, they agreed to break open the Priſons, to releaſe ſome of their Companions, and to go to the Lord-Mayor's Houſe, and to kill him, and burn his Houſe, and then to break open two other Houſes near the *Tower*, where there were Arms for three hundred Perſons: Then to diſperſe Libels, and to perſuade other People to join with them.

There is a later Caſe in my Lord Chief Juſtice *Keyling*'s Reports, which was the Intention of pulling down Bawdy-Houſes; there they took upon themſelves Regal Authority, and would not take the Courſe the Law preſcribed; but, my Lord, thoſe Caſes are attended with many worſe Circumſtances than this is, for there they aſſembled with Arms; there they had one they called *Captain* to lead them, with his Sword drawn;

drawn; they had Aprons, and ſuch things on Staves, which they called Standards and Colours, and in a military Way they marched, and did pull down ſeveral Houſes, which they called Bawdy-Houſes: That Caſe is reported in my Lord *Keyling*'s Reports, *fol.* 70, and was adjudged levying of War, becauſe the Intent was general, and becauſe they took upon themſelves to do that which is the Buſineſs of the Queen, and the Laws of the Kingdom only to do. But, my Lord, in that Caſe, there are two Perſons who ſeem to have as great a Charge of Guilt upon them as the Priſoner at the Bar, and were diſcharged from thoſe Indictments for levying War, by the Opinion of all the Judges. One of them was found to be at the Meeting where the Diſcourſe was of pulling down theſe Bawdy-Houſes, that is *William Green*, that he went along with them, caſting up his Cap, and hallooing with a Staff in his Hand; but becauſe there was not any particular Act of Force found to be committed by him, he was diſcharged. Another, one *Bedell*, was found among the Mob, and when the Guards came to diſperſe them, and he was purſued by one of the King's Soldiers, he called out to his Fellows to Face-about, and not to leave him. This we think is at leaſt as ſtrong an Evidence againſt them as has been given againſt the Priſoner at the Bar, and yet they were both diſcharged by the Opinion of all the Judges.

L. C. J. That was not becauſe of a Defect in the Evidence, but the Imperfection of the Verdict. The Jury did not in their Verdict expreſsly find that they were aiding and aſſiſting, and therefore the Court could not ſupply the Defect in the finding of the Jury.

Mr. *Darnell.* The Caſe in my Lord *Keyling* is thus: "The Jury find "that a great Number of Perſons, to the Number mentioned in the In-"dictment, armed as in the Indictment, did meet together in *Clerkenwel-*"*Green*, in the County of *Middleſex*, on Pretence of breaking open "Priſons, and releaſing Priſoners; that one of them, who had a Half-"Pike in his Hand, owned himſelf to be their Captain: That they came ſo "aſſembled together, to a Place there called the *New-Priſon*, being a pub-"lick Priſon of the County of *Middleſex*, and then and there ſaid, That "they came to ſearch for Priſoners, and break open the Priſon Doors, "and let out four Priſoners, two whereof were committed thither for "Felony, and two for other Offences; and that they being charged to "depart, replied, They had been Servants long, but now they would be "Maſters; that ſome being taken, they cried, One die, and all die: "That *Lattimer* was amongſt them, and active in breaking of the Priſon, "and was with the reſt in the Priſon after it was broke open. And that "*Bedell* was there, and being purſued by one of the King's Soldiers, "called out to the reſt of the Company to Face about, and not to leave "him."

My Lord, where a Fact is found, which Fact is an aiding and aſſiſting, we think it cannot be a Defect in the finding of the Verdict, that he did not aid and aſſiſt. The Facts they found, were only Inſtances of aiding and aſſiſting, and if theſe Inſtances will be ſufficient, then the Court were as fully poſſeſſed of them as they are now upon this Evidence.

My Lord, as to the Fact, we think we have a very good Caſe of it. We have Proof, every Hour of the Day of the firſt of *March*, where the Priſoner was, from Morning 'till Night. That he was not at the Conſult, the Night before, with the Mob, I think, is not pretended on the other Side. On the Day in the Indictment, we ſhall ſhew he was, from Eight or Nine in the Morning, in the Company of ſeveral Perſons, that we have here, until about Ten at Night, or later: That at that Hour, he was at an Ale-houſe in *Water-Lane*, in *Fleet-Street*, where a Gentleman's Servant came in, and told the Company there was a Fire; the Priſoner ſtarted up, and thought it had been in the Houſe, but finding it was not, he went into the Street; there it was reported, that Mr. *Burgeſs*'s Meeting-Houſe was pull'd down, and burnt. In about an Hour after that, he came along *Fleet-Street*, and at *Hercules-Pillars-Alley*, near the *Temple*, there was a Sempſtreſs ſtanding at her Door, with whom the Priſoner ſtay'd talking ſome Time, and whilſt they were together, ſeveral People came by, and ſaid, that *Burgeſs*'s Meeting-Houſe was quite down, and burnt: From thence he went up *Chancery-Lane*, and through *Lincoln's-Inn-Fields*, to ſee what was the Matter, and found, as it was reported, that it was all burnt. The Mob that were then about the Fire, laid hold of him, and uſed him as they did all other People that came by, and made him pull off his Hat, and halloo, High-Church and *Sacheverel*; if not, they muſt have a knock on the Pate. When they found he was much in drink, they puſh'd him about, and ſaid, He ſhould be their Captain; and then they halloo'd, and ſaluted him Captain; but nothing of this came from himſelf, but they gathered about him, and there their Captain was in the middle, more like to ſuffer, than command. My Lord, the Evidence againſt him don't pretend to charge him to be in *Drury-Lane*, only that he went that way with them. Now, as to the Intention, which they would ſuppoſe the Priſoner had, of pulling down all the Meeting-Houſes, I ſay, my Lord, a Man would not, from being a Captain, and from ſo great a Zeal to the Cauſe, deſert his Companions, even in the firſt Inſtance in which he could ſerve them: For I ſubmit it, Whether there is any Evidence that he was in, or at any one of the Meeting-Houſes, after the Fire in *Lincoln's-Inn-Fields?* And if he was ſo forward, as the Witneſſes ſeem to charge him to have been, ſurely he would have gone to *Drury-Lane*, at leaſt, and done ſome Act of his Authority, but that is not proved. And, my Lord, of our Side, we ſhall prove, that he did not go to *Drury-Lane*, but that, at Twelve o'Clock, he was in Bed, at his own Houſe in *Lambeth*; ſo that there will be no Time to ſuppoſe him Guilty of doing any thing after his entering upon his Office, but only that he went off as ſoon as he could.

There was one of the Witneſſes, my Lord, that ſaid, he was in *Lincoln's-Inn-Fields* about Eight or Nine o'Clock, and ſaw the Priſoner there; now we ſhall ſhew, that 'till half an Hour after Ten he was engaged in Company, in *Water-Lane:* But there is a Circumſtance in our Evidence, which, we think, may reconcile that; for we can prove, that at Dr. *Burgeſs*'s Meeting-Houſe there was a Waterman, in his Livery and Badge, who was buſy in pulling down, and carrying away the Materials, but the Priſoner cannot be ſuppoſed to be the ſame, for that Perſon wore his own Hair, and the Priſoner has worn a Wig many Years; and, my Lord, if my Inſtructions are true, we have Perſons that knew the Priſoner before, that will take it on their Oaths, that it was not *Dammaree*; if ſo, then the Witneſs that proves him to bring out the Branch, we hope, will be reconciled by this, that there was another Man in the ſame Habit. It is an eaſy thing for a Boy, in a Crowd, to make ſuch a Miſtake; for that was the Reaſon why he knew it to be *Dammaree*, becauſe he had his Waterman's Coat and Badge on: That Man is not found out, but we hope we ſhall not ſtand in his Place.

My Lord, another Circumſtance we have of the Innocence of the Priſoner, is, that the next Morning, when he got up, he went to his common Buſineſs, to work upon one of the Queen's Barges, and there, I think, he was, when the Meſſenger came to take him; he was not under the leaſt Apprehenſion, that he had done any thing that would make him Guilty of a Crime, eſpecially ſo great a one as this he is charged with; if he had, he would have taken ſome Care of himſelf; but his Innocence was all the Protection he made uſe of. We hope our Evidence will ſatisfy your Lordſhip and the Jury, that ſome of the Witneſſes againſt him were miſtaken; and ours will ſhew, that he withdrew from the Fire as ſoon as poſſibly he could; and we ſhall call ſome other Witneſſes to ſhew that he is a Man of another Character, than to be guilty of ſuch an Offence. The Gentlemen of the other Side ſaid, he was doubly obliged to bear Allegiance to Her Majeſty; we own it, that he was Her Waterman; that he always behaved himſelf dutifully towards Her Majeſty; that on other Occaſions he has expreſs'd his Abhorrence of any thing of this Nature. My Lord, if he is of a good Character, zealous for the Government, and has always expreſs'd himſelf ſo, no Man, that is of that Character, can be Guilty of ſuch a Crime, than which there can be none greater, to raiſe War againſt Her Majeſty in the Bowels of the Kingdom; and the Greatneſs of the Charge is that which, we hope, will make your Lordſhip and the Jury require the more exact Proof. We will call our Witneſſes to make out our Caſe, and then ſubmit it to your Lordſhip and the Jury.

Then Thomas Allen *was ſworn.*

Mr. *Whittaker.* Do you know Mr. *Dammaree?*

T. Allen. Yes.

Mr. *Whittaker.* Was he with you the Firſt of *March* laſt?

T. Allen. Yes.

Mr. *Whittaker.* At what Time?

T. Allen. About Ten o'Clock.

Mr. *Whittaker.* On what Occaſion was he with you?

T. Allen. To have a 'Prentice out of *Chriſt's-Hoſpital.*

Mr. *Whittaker.* Was it Ten in the Morning, or in the Evening?

T. Allen. In the Morning.

Mr. *Whittaker.* How long did you ſtay together?

T. Allen. 'Till about Twelve.

Mr. *Whittaker.* Where did you leave him?

T. Allen. At a Publick Houſe in *Grey-Friars.*

Mr. *Whittaker.* Who did you leave him in Company with?

T. Allen. There was one *Wood*, that went out of the Houſe with him.

Then Stephen Pink *was ſworn.*

Mr. *Whittaker.* Do you know *Dammaree?*

S. Pink. Yes.

Mr. *Whittaker.* Was you with him the Firſt of *March* laſt?

S. Pink. Yes; on *Wedneſday*, the Firſt of *March* laſt.

Mr. *Whittaker.* About what Time of the Day did he come to you?

S. Pink. About Ten of the Clock in the Morning.

Mr. *Whittaker.* How long did he continue with you?

S. Pink. 'Till between Two and Three.

Mr. *Whittaker.* What Buſineſs was he about?

S. Pink. He came to the Hoſpital, on Account of taking a Boy to be his Apprentice.

Mr. *Whittaker.* What Time did you part with him? And where?

S. Pink. I left him at the *Cock* at *Amen-Corner*, with Mr. *Wood*, between Two and Three o'Clock.

Then S. Wood *was ſworn.*

Mr. *Whittaker.* Was you in Company with *Dammaree*, on the Firſt of *March* laſt?

Wood. I was in Company with him, from Nine in the Morning 'till paſt Ten at Night.

Mr. *Whittaker.* How did you employ yourſelves all that while?

Wood. We went from Houſe to Houſe; we were drinking from one Friend's Houſe to another.

Mr. *Whittaker.* What was the laſt Ale-houſe you was at with him?

Wood. It was at the *Bell*, in *Water-Lane.*

Mr. *Whittaker.* What Time was it when you was there?

Wood. It was a Quarter after Ten.

Mr. *Darnell.* From the Time that *Pink* left you at *Amen-Corner*, was you in Company with him 'till a Quarter after Ten?

Wood. Yes, I was.

Mr. *Darnell.* Was he not out of your Company all that time?

Wood. No.

Mr. *Darnell.* I ſuppoſe you was not idle all that while; Was you drinking?

Wood. Yes; we were drinking all that time.

Mr. *Whittaker.* What News had you about a Fire?

Wood. There was one *John Light*, a Poſtillion, came in, and ſaid, there was a great Fire, and all the Street was light. Mr. *Dammaree* ſtarts up, ſays he, I have a Gentlewoman in the *Strand* that is my Acquaintance, I muſt go and aſſiſt her.

Mr. *Whittaker.* Was there any Talk of the Fire being in the *Strand?*

Wood Yes, in the *Strand.*

Mr. *Darnell.* Who told you it was there?

Wood. It was *John Light.*

Mr. *Darnell.* What did *Dammaree* do then?

Wood. He ſaid, he muſt aſſiſt the Gentlewoman.

Mr. *Darnell.* What time did you come out of the Ale-houſe?

Wood. It was not half an Hour after Ten.

Mr. *Darnell.* Did you come out of the Ale-houſe with him?

Wood. Yes.

Mr.

Mr. *Darnell.* Did you ſtop any where?

Wood. No where, as I know of. He was at *Temple-Bar*, making way to the Gentlewoman, and the Crowd forced him up *Sheer-Lane*, into *Lincoln's-Inn-Fields*; and when they ſaw his Badge, they ſaid, Damn ye, you are the Queen's Waterman, you ſhall go with us.

Mr. *Whittaker.* Give an Account of what paſſed when he was there.

Wood. I ſaw him ſtand againſt the dead Wall, and they took hold of him, and ſaid, Damn ye, you are the Queen's Waterman, you ſhall go with us, or we will tear you in Pieces.

Mr. *Whittaker.* Did he go willingly? Or what did he ſay?

Wood. He ſaid, God bleſs the Queen, Gentlemen, I'll do any Thing you would have me, don't knock me on the Head.

Mr. *Whittaker.* Whereabout was this?

Wood. It was, I think, juſt by the Street they call *Duke-ſtreet.*

Mr. Att. Gen. You ſay you was with him all this while, and came along with him, and at *Duke-ſtreet*, you ſay——

Wood. At *Duke-ſtreet*, I think they call it, as you go to *Turn-Stile*, juſt at the Wicket, as you go through *Lincoln's-Inn.*

Mr. Att. Gen. Where did they lay hold of him?

Wood. Juſt at *Lincoln's-Inn-Gate.*

Mr. Att. Gen. But I thought he had been pulled by the Mob at *Temple-Bar?*

Wood. We were going to the Gentlewoman's Houſe.

Mr. Att. Gen. Why, I thought ſhe lived in the *Strand*; Was *Lincoln's-Inn-Fields* the Way to the *Strand?*

Wood. The Multitude of People forced him from *Fleet-Street* up *Sheer-Lane.*

Mr. Att. Gen. Where did you meet them at firſt?

Wood. He was going through *Temple-Bar* to the *Strand*, and they ſaid, Here is the Fire; ſo we turned up the Lane: There was no paſſing thro' to the *Strand*, there was ſuch a Crowd.

Mr. Att. Gen. But you found no Crowd afterwards, I ſuppoſe. Was the Preſs ſo great at *Temple-Bar* that you was forced up *Sheer-Lane?*

Wood. Yes.

Mr. Att. Gen. You did not touch the Ground all the while, did you?

Wood. I ſaw them force him all the Time.

Mr. Att. Gen. Did they force you too?

Wood. No, I went along.

Mr. Att. Gen. Was you forced up from *Temple-Bar* to *Lincoln's-Inn-Gate?*

Wood. Forced? No, Sir.

Mr. Att. Gen. Why, he is as big a Man as you, how came they to force him, and not you?

Wood. He was taken hold of by the Mob in *Duke-Street.*

Mr. Att. Gen. Now you ſay, the firſt Time he was touched by them was at *Duke-Street*; can you ſay you was forced from *Temple-Bar* to *Lincoln's-Inn-Fields?*

Wood. Yes, we were forced by Violence.

Mr. Att. Gen. Was you forced for one?

Wood. Yes, we were forced among the Crowd of People.

Mr. Juſtice *Tracy.* You ſay you was carried in the Crowd from *Temple-Bar*; How far was you carried?

Wood. To *Duke-Street.*

Mr. Juſtice *Tracy.* Where is *Duke-Street?*

Wood. It is behind *Lincoln's-Inn*; you go through a little Wicket; it is where the Shopkeepers are.

Mr. Sol. Gen. Where is this which you call *Duke-Street?*

Wood. I am not well acquainted with the Streets.

Mr. Sol. Gen. How came you then to call it *Duke-Street?*

Wood. They tell me it is called ſo: It is a narrow Street, juſt behind *Lincoln's-Inn.* When you come through the Wicket, you muſt turn of the Right Hand to go to *Turn-Stile.*

L. C. J. You ſay you went to *Temple-Bar* to go into the *Strand*, and then you met ſo great a Preſs, that you could not go through. Where did you go then?

Wood. I went up *Sheer-Lane.*

L. C. J. Did the Crowd force you up?—*Wood.* Yes.

L. C. J. Did all that Crowd that you met at *Temple-Bar* go up *Sheer-Lane?*

Wood. Some went one Way, and ſome another.

L. C. J. Which Side of *Fleet-Street* was you when you went to *Temple-Bar?*

Wood. On the Side next the *Temple.*

L. C. J. Then how came you to croſs the Street, when there was ſuch a Crowd you could not get along?

Wood. They forced us along.

L. C. J. I aſk you, if there was ſuch a Crowd, that you could not get through, How could you get croſs the Street to *Sheer-Lane?*

Wood. They all went that way.

L. C. J. Then you ſay, that all that Crowd that filled up the Street, ſo as to hinder your paſſing into the *Strand*, were all received into *Sheer-Lane:* When you was got up into *Sheer-Lane*, where did the Crowd carry you then?

Wood. Into *Lincoln's-Inn.*

L. C. J. When you was in the Square, Where did you go then? Did he Crowd carry you through the Wicket?

Wood. They forced as hard as ever they could force.

L. C. J. Then you ſay, when you was in the open Square, you could not avoid being carried by the Crowd through the Wicket. Conſider what you ſay, you are on your Oath. How could you, when you was in the Square, be forced by the Crowd through the Wicket? In the next Place, Where did you get out from the Crowd, when you was got thro' the Wicket? How did you get from the Crowd?

Wood. I came down *Lincoln's-Inn*, into *Sheer-Lane*; there is a way that goes backwards, behind the Houſes: I went away, and left them all.

L. C. J. When you left them, where was *Dammaree?*

Wood. They forced him to the Fire.

L. C. J. Where did they lay hold of him?

Wood. It was at the dead Wall at *Duke-Street.*

L. C. J. Is that between the Wicket and the Fields?

Wood. Yes, it is oppoſite to the Wicket.

L. C. J. I aſk, Was it between the Wicket and the Fields?

Wood. Yes, it was.

L. C. J. I thought you had not gone at all of the Right Hand towards he Fields, but that you turned down towards *Sheer-Lane,*

Wood. No, there was no getting that Way, I went down into *Chancery-Lane.*

L. C. J. Now tell me, Which Way did you get into *Chancery-Lane*, if you were at the Backſide of *Lincoln's-Inn*, and did not go into the Fields? Is not the other Way the Way to *Sheer-Lane?*

Mr. Sol. Gen. How could you get into *Chancery-Lane*, without going by *Sheer-Lane*, or into *Holborn?*

Wood. I went the Backway.

Mr. Sol. Gen. Then tell us which Way did you go.

Wood. I turned on the Left-hand.

Mr. Sol. Gen. Where was you ſtanding when you turned?

Wood. Juſt at the Wicket.

Mr. Sol. Gen. Did you go no further?—*Wood.* No, no further.

Mr. Sol. Gen. Then how could you ſee the Mob lay hold of him at the dead Wall? Pray tell us where, and in what Manner you got from the Mob to go Home?

Wood. I came down into *Fleet-Street.*

Mr. Sol. Gen. Where did you come into *Fleet-Street?*

Wood. Juſt againſt the lower *Temple-Gate.*

Mr. Sol. Gen. Which do you call the lower *Temple-Gate*, that next to the Bar, or the other?

Wood. I mean that next to *Fleet-Bridge.*

L. C. J. At that Time might not *Dammaree* and you have gone away into *Chancery-Lane*, or where you would?

Wood. No, they took hold of him.

L. C. J. If they ſeized him in that place, whither did they take him? what did they do with him?

Wood. They took hold of him, and pulled him, and hauled and forced him by Violence.

L. C. J. Well, did you ſee him afterwards? Did he not go along with you?

Wood. No, when I ſaw they laid hold on him, I left him.

L. C. J. Then you ſaw nothing of what paſſed in the Fields?

Wood. No; nothing of that.

L. C. J. Now you have been telling us that it was a Quarter after Ten when you parted from the *Bell*, in *Water-Lane:* How came you to be ſo exact as to the Time? How could you, that had been drinking twelve Hours, be able to tell to a Quarter of an Hour what Time it was? What ſay you to it?—*No Anſwer.*

Mr. *Whittaker.* Do you know the Names of the Streets about *Lincoln's-Inn?*

Wood. I know the Street again.

L. C. J. He has deſcribed the Streets ſufficiently; no Advantage muſt be taken of his miſtaking the Name.

L. C. Baron. You ſpeak of ſome that took hold of him; whereabout was that?

Wood. At *Duke-Street*, behind *Lincoln's-Inn* Wicket.

L. C. Baron. You ſaid, as ſoon as they laid Hands on him, you left him: Was it ſo or not?—*Wood.* Yes.

L. C. Baron. Then you ſay no more; you ſaw no more what was done by him, or with him, after that.—*No Anſwer.*

Then Fucard *was ſworn.*

Mr. *Whittaker.* Did you ſee Mr. *Dammaree* on the firſt of *March* laſt?

Fucard. I keep the *Bell* Alehouſe in *Water-Lane*; he came to my Houſe about Two, and ſtaid there till half an Hour after Ten.

Mr. *Whittaker.* Are you ſure of that?---*Fucard.* I am ſure of it.

L. C. J. Was he full of Drink then?---*Fucard.* Yes, full of Drink.

Mr. *Darnell.* Do you remember that any gave an Account of a Fire in the *Strand?*

Fucard. I know nothing of that.

Mr. *Darnell.* Do you know on what Occaſion he went away?

Fucard. He went on no Occaſion that I know of, but being in Drink.

Mr. *Darnell.* Did you hear any Thing of a Fire?---*Fucard.* Nothing.

Mr. Att. Gen. Where do you live?

Fucard. At the *Bell*, in *Water-Lane.*

Mr. Att. Gen. What Countryman are you?---*Fucard.* A *German.*

Mr. Att. Gen. Did you take any Account when he went away?

Fucard. Yes, about half an Hour after Ten.

Mr. Att. Gen. How came you to take ſo particular Notice of the Time?

Fucard. I can't tell how it came.

Mr. Sol. Gen. Did Nobody come in and tell of a Fire?

Fucard. I heard nothing of it.

Then Charles Biſhop *was ſworn.*

Mr. *Whittaker.* Was you with *Dammaree* the firſt of *March* laſt?

C. Biſhop. Yes.

Mr. *Whittaker.* How long did you ſtay with him?

C. Biſhop. 'Till half an Hour after Ten.

Mr. *Whittaker.* Did any body bring any Account of a Fire?

C Biſhop. Yes, our Poſtillion.

Mr. *Whittaker.* What was done then?

C. Biſhop. We ſtaid an Hour after that.

Mr. *Darnell.* When was it that they brought the News of the Fire?

C. Biſhop. It was half an Hour after Eight, or Nine.

Mr. *Darnell.* Pray give an Account what paſſed after?

C. Biſhop. We had a Pound of Sauſages, and ſmoaked a Pipe.

Mr. *Whittaker.* When he went away, on what Occaſion did he ſay he would go?

C. Biſhop. He ſaid nothing of the Fire, but parted from me, and was much in Drink.

Mr. *Darnell.* How long did he ſtay after the Talk of the Fire?

C. Biſhop. About an Hour.

Mr. *Darnell.* Did you leave him there, or did he leave you?

C. Biſhop. He left me; I ſtaid a while after, and I ſaw him afterwards in *Fleet-Street* talking with a Woman.

Mr. *Darnell.* Whereabout was that?

C. Biſhop. Juſt by the *Green-Dragon* Tavern.

Mr. *Darnell.* Did you ſpeak with them there?

C. Biſhop. No; he was ſo much in Drink, that I did not care to ſpeak with him.

Mr. Juſtice *Tracy.* Was *Wood* with him then?

C. Biſhop. No; I did not ſee him.

L. C. J. Did *Wood* go with him from you?

C. Biſhop. Yes,

L. C. J. Do you remember that when the News was brought, he ſaid there was a Gentlewoman in the *Strand* that he muſt take Care of?

C. Biſhop. No; I do not remember it.

Mr. *Darnell.* Our Intent in calling this Witneſs, is to ſhew that he was at that Houſe till half an Hour after Ten.

L. C. J. He ſays, the News was brought at half an Hour after Eight or Nine, and that they parted half an Hour after Ten; and when he is aſked how long they ſtaid after the News, he ſays, about an Hour.

L. C. Baron. How long did you ſit after the News of the Fire?

C. Biſhop. I can't exactly tell; but we ſtaid 'till half an Hour after Ten.

L. C. Baron. When you ſaw him at the Tavern Door, was *Wood* with him?—*C. Biſhop.* No.

L. C. Baron. Pray, what time was it you ſaw him there?

C. Biſhop. It was about three Quarters after Ten.

Then John Light *was ſworn.*

Mr. *Whittaker.* Was you at the *Bell* Alehouſe the Firſt of *March* laſt, with *Dammaree?*---*J. Light.* Yes, I came in there.

Mr. *Whittaker.* At what time of Night?

J. Light. Between Eight and Nine o'Clock.

Mr. *Whittaker.* What Account did you bring of a Fire?

J. Light. I brought in the News.

Mr. *Whittaker.* How long did you tarry with him after that?

J. Light. I did not tarry at all; I came in for a Pint of Drink, and went away.

Mr. *Whittaker.* Was you not in his Company after that?

J. Light. I came into the Houſe before they went away.

Mr. *Whittaker.* What time of Night was it when you came in the ſecond time?—*J. Light.* About Ten o'Clock.

Mr. *Whittaker.* How long did they ſtay after that?

J. Light. 'Till between Ten and Eleven.

Then Ward *was ſworn.*

Mr. *Whittaker.* Did you ſee *Dammaree* the Firſt of *March*, at Night?

Ward. Yes.

Mr. *Whittaker.* What time of Night was it?

Ward. Half an Hour after Ten.

Mr. *Whittaker.* Where did you ſee him?

Ward. I left him at this Gentlewoman's Shop.

Mr. *Whittaker.* Where does ſhe live?---*Ward.* In *Fleet-Street.*

Mr. *Whittaker.* In what Condition was he when you ſaw him there?

Ward. He was drunk.

Mr. *Whittaker.* Did you ſee him do any thing indecent?

Ward. Yes, he reeled about, and aſked what is the matter? We told him there was a Diſturbance; ſays he, I hear there is a Fire.

Mr. *Whittaker.* What did he do after that?---*Ward.* I left him there.

Mr. *Whittaker.* Was any body with him?

Ward. No, none but himſelf.

Mr. *Darnell.* How long before had the Fire been?

Ward. A long time; there were forty People had come and ſaid, that all the Inſide of the Meeting was burned.

Mr. *Darnell.* How long before that?

Ward. I believe it might be an Hour before; about Eight o'Clock: I was going into the City, I ſaw a great many People, and they had the two Irons that bore up the Top of the Pulpit: What is the Matter, ſaid I? Why, ſay they, thoſe Men have the Bars that kept up the Top of Mr. *Burgeſs*'s Pulpit; and I knew them to be thoſe Bars, for I have ſeen them often.

Mr. *Darnell.* Where was it that you ſaw them?

Ward. It was at St. *Bride*'s Church.

Mr. *Darnell.* You ſay the Fire had been an Hour before you ſaw him in *Fleet-Street*?

Ward. Yes.

L. C. Baron. Who told you they were the Bars?

Ward. The People that flock'd after them.

Then Mrs. Giles *was ſworn.*

Mr. *Whittaker.* Do you remember the Night that this Diſturbance was, that you ſaw Mr. *Dammaree?*---Mrs. *Giles.* I ſaw him, I believe, about a Quarter after Ten; he ſtood and talked with me.

Mr. *Whittaker.* How long did he ſtay?

Mrs. *Giles.* Above a Quarter of an Hour.

Mr. *Whittaker.* How do you know it was that time?

Mrs. *Giles.* After he was gone, I did but lock up my Doors, and go up Stairs, and it ſtruck Eleven.

Mr. *Whittaker.* What Condition was he in?---Mrs. *Giles.* Very drunk.

Mr. *Whittaker.* How long had the Fire been before that?

Mrs. *Giles.* A long time, ſome Hours: The People that went along, ſaid, they had burnt the Inſide of the Meeting. About Eight o'Clock they were burning it, and about Ten o'Clock they ſaid it was all burnt.

Mr. Juſt. *Tracy.* Did you hear him talk of any Fire at a Friend's Houſe in the *Strand?*

Mrs. *Giles.* He ſaid nothing of that, but aſked me if there was not a Fire: I ſaid there was a Fire in *Lincoln's-Inn-Fields.*

Mr. Sol. Gen. Was any body with him?

Mrs. *Giles.* Nobody but himſelf.

Mr. Att. Gen. Was you acquainted with him?

Mrs. *Giles.* I never ſaw him before, that I know.

Mr. Att. Gen. Then you was an utter Stranger to him? How came he to be talking with you?---Mrs. *Giles.* I was ſtanding at the Door with ſome others, and he came to us.

Mr. Att. Gen. Did he come to you on any Buſineſs?

Mrs. *Giles.* He came as he was walking along, and aſked me, What was the matter?

Mr. Att. Gen. Had not you been aſked that Queſtion by a great many before?---Mrs. *Giles.* By a great many.

Mr. Att. Gen. Do you remember who aſked you the Queſtion before him?---Mrs. *Giles.* No.

Mr. Att. Gen. Then how came you to take more Notice of him than of others that aſked the ſame Queſtion?

Mrs. *Giles.* Becauſe he ſtood a great while, and talked, and had the Queen's Coat on: He was very ſuddled, and ſtood and talked with me, and that made me take notice of him.

Mr. Att. Gen. How came you to be ſubpœna'd?

Mrs. *Giles.* Becauſe I had ſaid to ſeveral Gentlewomen, that there was ſuch an one taken up; they ſaid he was pulling down the Meeting-Houſe: I ſaid it was impoſſible, for that he was with me at that time, and came from the City-wards, and that made me inquire into it.

Mr. Att. Gen. Then you was ſent to him, was you?

Mrs. *Giles.* No; I did not go, but a Gentlewoman in *Arundel-Street*, one Mrs. *Pinkney* did: I know nothing of him: But becauſe I thought he could not be the Man, I was willing to clear him if I could.

Mr. *Whittaker.* How long have you lived where you now do?

Mrs. *Giles.* I have lived there twenty Years.

Mr. Sol. Gen. What did you talk about? He could not be a Quarter of an Hour aſking that Queſtion.

Mrs. *Giles.* No; but a great many came by, and aſked, Who are you for? and what are you? And he ſaid, You may ſee who I am for; I am for the Queen.

Mr. Sol. Gen. Then he did not talk with you ſo long?

Mrs. *Giles.* I was at the Door all the time, and he talked with me and others.

Damm. I deſire to aſk her, whether I ſaid any thing of a Nurſe-Child?

Mrs. *Giles.* He ſaid he had nurſed my Lord Mayor's Children.

Mr. Att. Gen. What elſe did you talk of?

Mrs. *Giles.* I adviſed him to go home; and I turn'd about and went in, and he ſaid, Good Night, Miſtreſs.

L. C. Baron. Did he talk ſenſibly?

Mrs. *Giles.* He talked as if he was drunk.

L. C. Baron. He gave an Account you ſay of nurſing Children: How came that?

Mrs. *Giles.* I ſaid to him, I wiſhed my Lord Mayor would ſend out the Guards to quell the Mob: Says he, I nurſed his Children; that was the Occaſion of it.

Mr. *Darnell.* Did he ſay any thing of any other Nurſe-Children?

Mrs. *Giles.* Yes; he ſaid he nurſed Sir *Richard Hoare*'s; Did you nurſe them, ſaid I? Yes, ſays he, we did at home.

Mr. Att. Gen. Are you ſure that is the Man?

Mrs. *Giles.* Yes; for I went to *Newgate* to ſee him.

Mr. *Thomſon.* How came you to remember the Time ſo exactly?

Mrs. *Giles.* Becauſe I had ſtood at the Door ſo long, and heard ſeveral go by, and ſay, 'twas ſuch an Hour.

Mr. *Whittaker.* How near do you live from St. *Dunſtan*'s Clock?

Mrs. *Giles.* Juſt over-againſt it.

Mr. *Whittaker.* We will now call ſome Witneſſes, to ſhew that he was under Force and Conſtraint.

Then Mr. Cummins *was ſworn.*

Mr. *Darnell.* Do you remember that you ſaw *Dammaree* the Night that the Diſturbance was at the Meeting-Houſe?

Cummins. My Lord, I don't know the Man; but I did ſee a Man with the Queen's Coat and Badge; I keep a Shop in *Lincoln's-Inn-Fields*, and a Houſe in *Turnſtile:* I being robbed there ſome time before, I went between the two Shops to ſee they did me no harm: I ſent my Servant to Bed, and going to ſee if he was there, I did not find him; but going back again by the Fire, the Mob cry'd, Huzza, *Sacheverel.* I thinking of the Boy, did not mind to pull off my Hat, and they ſtruck me over my Head, and then I was forced to halloo as they did. I met my Boy preſently, and ſent him to Bed: I went away immediately, and by the Fire I ſaw that Man, and ſome People had him by the Shoulders, and thruſt him about, ſome one way, and ſome another: Sometimes he was at a diſtance from the Fire, and ſometimes very near it; but he ſeemed as if he could not ſtand.

Mr. *Darnell.* What time of Night was this?

Cumm. As near as I can gueſs, it was about Eleven o'Clock.

Mr. *Darnell.* Did you ſee the Mob lay Hands on him?

Cumm. I ſaw them puſh him from Hand to Hand, and I could compare him to nothing but a Dog in a Ring, they toſſed him up and down; but I don't know the Man, but only by the Coat.

Mr. *Darnell.* Do you take it the Mob made themſelves merry with him, or, that he aided them?

Cumm. I can't be a Judge of that Matter?

Mr. Att. Gen. What time did you ſhut up your Shop?

Cumm. I ſhut it up, as near as I can gueſs, at Seven o'Clock, becauſe there was a great Mob: My next Neighbour would not keep open any longer; ſo we ſhut up our Shops.

Mr. Att. Gen. What time did you ſend your Servant to Bed?

Cumm. I ſent him out about three Quarters after Ten, or more, and I run down after him.

Mr. Att. Gen. How long was it after you ſent him away, that you went to look after him?

Cumm. I went preſently after him; I got to the Shop before him.

Mr. Sol. Gen. Were not other People puſhed about beſides him?

Cumm. I ſaw Nobody puſhed about but him that had the Queen's Cloth on; I did not ſtay, but made all the haſte I could away.

L. C. J. Are you ſure the Priſoner is the Man you ſpeak of?

Cumm. No.

L. C. J. Do you believe it is he?---*Cumm.* I can't tell; I can't take upon me to ſay, for it was a Man with the Queen's Cloth on.

L. C. J. Whereabout did you ſee him?

Cumm. I was coming up the dead Wall under *Lincoln's-Inn* Garden to ſee for my Servant, and at the lower End, juſt by the Shops, there was a great Number of People made a Ring, like that where they play at Cudgels: He was in the middle of them, and they ſhov'd him about from one to another: I met immediately with my Boy, and I took him a Box on the Ear.

L. C. J. I only want to know the Place where you ſaw him.

Cumm. In *Lincoln's-Inn-Fields*, within the Rails, under *Lincoln's-Inn* Garden, towards *Portugal-Row*; I believe it might be ſeven or eight Yards within the Rails.

Damm. My Lord, this Shirt which I have on now, was torn by them.

Then Mary Reading *was ſworn.*

Mr. *Whittaker.* Was you near this Fire?

M. Reading. My Lord, I heard there was a great Fire, ſo I went out, and ſaw a great Light; I ſaw one of our Neighbours; ſays ſhe, Where is this Fire? I ſaid, I heard it was in *Lincoln's-Inn-Fields*; at that, ſays ſhe, my Brother was here juſt now, I wiſh he is not gone to it. She aſked me to go along with her; we went into *Lincoln's-Inn-Fields*, and ſaw the Fire. As we ſtood there, I ſaw a Sconce brought, and thrown into the Fire. I ſaw a little ſhort Man, a black Man, in black Hair, carry the Sconce round the Fire three times.

Mr. *Whittaker.* What Dreſs was he in?

M. Reading. I could not ſee what Dreſs; I ſaw he was in Waterman's Cloaths, but I could not ſee the Colour; but that is not the Man.

Mr. *Darnell.* Is that the Man?

M. Reading. No; he was a little ſhort Man in his own Hair.

Mr. *Darnell.* Was there any more than one Sconce thrown in?

M. Reading. I ſaw no more.

L. C. J. You could not ſay what Colour his Cloaths were; and can you ſay that this was not the Man?——*M. Reading.* Yes.

Mr. *Darnell.* Did you ſee any thing more?

M. Reading. When I came away, the Fire was pretty well burnt, and coming along, we met with a Waterman; ſays the Woman that was with me, Lord bleſs me! Here is one of the Queen's Watermen. What have you to ſay to the Queen's Waterman? ſays he: Nothing, ſaid ſhe: But God bleſs the Queen, and her Waterman too. Says he, You are a jolly Girl, and I will kiſs you.

L. C. J. Whereabouts did you meet that Waterman?

M. Reading. As we were going from the Fire, we met him going up to it; and this is the Man that we met going towards the Fire when we came from it.

L. C. J. Was that before or after the burning the Sconce?

M. Reading. It was afterwards.

L. C. J. How long was it after?

M. Reading. I can ſafely take my Oath, it was Half an Hour.

L. C. J. Was any thing thrown into the Fire after that Man came?

M. Reading. I never went thither after it.

Mr. Att. Gen. Where do you live?

M. Reading. In St. *Andrews Street*, near the *Seven Dials.*

Mr. Att. Gen. Did you ever ſee him before?—*M. Reading.* Never before.

L. C. J. Where was you going when you met him?

M. Reading. I was going homewards, towards *Great Queen-Street*, and I met him coming towards the Fire.

L. C. J. Was there at that time any Fire in *Drury-Lane?*

M. Reading. They were pulling down the Meeting-Houſe in *Drury-Lane.*

L. C. J. Then you met him coming from *Queen-Street*, a little time after that they had begun to pull down the Houſe in *Drury-Lane*; and about half an Hour after the Branch was thrown into the Fire in *Lincoln's-Inn-Fields?*——*M. Reading.* Yes, it was.

L. C. Baron. Did you ſee that he was in Drink?

M. Reading. I believe he was; for the Woman he kiſſed ſaid, he ſmelt ſtrong of Liquor.

Mr. Att. Gen. How long was this after the Sconce was thrown in?

M. Reading. It was about half an Hour; I believe rather more than leſs.

Then Iſabel Prince *was ſworn.*

Mr. *Whittaker.* Was you at the Fire in *Lincoln's-Inn-Fields* the firſt of *March* laſt, at Night?——*I. Prince.* Yes.

Mr. *Whittaker.* Do you remember who it was that carried the Braſs Sconce?

I. Prince. Sir, I went to the Fire, becauſe I have a Brother lives by there, and was afraid that he might come to ſome Damage. As I was going, there was a vaſt Crowd, and a great Ring; and in that Ring, as I could ſee between them, I ſaw a little Man with black Hair, very ſhort; he carried the Sconce three times round the Fire, and then threw it in.

Mr. *Whittaker.* What Sort of Man do you ſay he was?

I. Prince. He was a black Man, a ſhort Man with his own Hair.

Mr. *Whittaker.* Is that he?——*I. Prince.* No.

Mr. *Whittaker.* Was he in a Waterman's Habit?

I. Prince. Yes; but I can't ſay he had a Badge.

L. C. J. Was you with the laſt Witneſs?——*I. Prince.* Yes.

L. C. J. How near was you to the Fire when you ſaw him carry it round?

I. Prince. As near as I could get for the Crowd, I believe as near as that Place. [*Pointing to the other Side the Court.*] I could not go any nearer, for the Fire was vaſtly hot.

L. C. J. Was there any Crowd there?

I. Prince. Yes, a great one; but I was of the Outſide of the Ring.

L. C. J. Then if he was a little Man, and you are no tall Woman, and you were of the Outſide of the Ring, how could you ſee him?

I. Prince. Becauſe I looked through under their Arms as they paſſed along: The Crowd was ſtill going to fetch Fire, ſo that they many times abated, and came again.

L. C. J. You ſay you diſtinguiſhed his Hair to be black; what Colour was his Coat?

I. Prince. I can't well tell; but I believe it was either grey or black.

L. C. J. Had he any Badge?——*I. Prince.* I believe he had.

L. C. J. Where was it?——*I. Prince.* I ſaw it upon his Arm.

Mr. *Whittaker.* Was the Crowd greater about the Fire at ſome times than others?

I. Prince. Yes, the Crowd abated; ſome went to *Holborn*, and ſome to the Right, and ſome to the Left.

L. C. J. The laſt Witneſs ſaid, the Fire was burnt to a Coal.

I. Prince. Yes, the Fire was burnt to a Coal; and as I was going home, I met this Man: Says I, There goes the Queen's Waterman: Says he, What have you to ſay to the Queen's Waterman? Nothing, ſays I, but God bleſs the Queen, and her Waterman too. And then he gave me a Kiſs, and there we parted.

L. C. J. I take Notice of that Expreſſion, That you ſaid, there goes the Queen's Waterman: Had you heard any Talk before of the Queen's Waterman?

I. Prince. No; but I heard that the Guards were coming.

L. C. J. You did not take the Waterman for one of the Guards, did ye?

I. Prince. No.

L. C. J. But had you heard any one ſpeak of the Waterman before?

I. Prince. No.

L. C. Baron. Where did you meet him, when you had that Favour from him?——*I. Prince.* Within the Rails; he was going to the Fire, and I was going from it.

L. C. Baron. Whence did he come?

I. Prince. I think either from the Corner, by the Duke of *Newcaſtle*'s, or from *Clare-Market*; I don't know which, for I met him within the Rails.

Then Rowland Walker *was ſworn.*

Mr. *Whittaker.* Did you ſee *Dammaree* the firſt of *March* laſt?

R. Walker. Yes.

Mr. *Whittaker.* At what time?

R. Walker. At half an Hour after eleven.

Mr. *Whittaker.* Where did you ſee him?

R. Walker. At *Strand-Bridge*, I carried him in my Boat.

Mr. *Whittaker.* Where did you carry him?

R. Walker. Croſs the Water.

Mr. *Darnell.* Did you obſerve any Clock ſtrike?

R. Walker. Yes; *Somerſet-Houſe* Clock ſtruck two Quarters paſt eleven before he came into my Boat.

Mr. *Darnell.* Where did you carry him?

R. Walker. To *Marſh*'s Cauſeway.

Mr. *Darnell.* Does he live there?—*R. Walker.* Yes, juſt by.

Mr. *Darnell.* Did you ſee him home?

R. Walker. No; I helped him out of the Boat; but I did not go home with him.

Mr. Att. Gen. Was you deſired to take Notice what o'Clock it was?

R. Walker. No; but I was in my Boat waiting, and heard the Quarters ſtrike.

Mr. Att. Gen. You ſay it ſtruck the Quarters; how many Strokes denotes it?——*R. Walker.* Two.

Mr. Att. Gen. Then you did not hear what the Clock itſelf ſtruck?

R. Walker. Yes; I heard the Clock ſtrike eleven before he came down.

Mr. *Darnell.* What Hour did the Clock ſtrike, before it ſtruck the two Quarters?

R. Walker. The great Clock ſtruck eleven, and I ſat in my Boat and ſmoaked a Pipe, and at the ſecond Stroke after eleven I took him into my Boat.

L. C. Baron. What Condition was he in?

R. Walker. Very much in Drink.

Then Heſter Hales *was ſworn.*

Mr. *Whittaker.* Did you ſee Mr. *Dammaree* the firſt of *March* laſt, at Night?——*H. Hales.* Yes.

Mr. *Whittaker.* At what time?—*H. Hales.* A little after eleven.

Mr. *Whittaker.* At what Place did you ſee him?

H. Hales. At the *Maypole*, in the *Strand.*

Mr. *Whittaker.* Which Way was he going?——*H. Hales.* I was coming out of *Fleet-Street*, and he was going the other Way.

L. C. J. Which Way was you going?——*H. Hales.* I was going out of *Fleet-Street* home, where I live.

L. C. J. Where do you live?

H. Hales. Over-againſt *Somerſet-Houſe.*

L. C. J. Where did you meet him?—*H. Hales.* I met him by the *Maypole.*

L. C. J. What Place did you come from?

H. Hales. I came out of *New-Street.*

L. C. J. Which Way do you apprehend he had come?

H. Hales. I did not aſk him; but he was in the *Strand*, going along towards *Temple-Bar.*

L. C. J. Whereabouts in the *Strand?*—*H. Hales.* On the other Side the *Maypole*, going towards *Strand-Bridge.*

L. C. J. What o'Clock was it then?—*H. Hales.* A little after eleven.

Mr. Att. Gen. What o'Clock do you take it to be now?

H. Hales. What o'Clock! Why, 'tis paſt one.

Mr. Sol. Gen. Which Side of *Drury-Lane* was it you ſaw him?

H. Hales. On this Side *Drury-Lane.*

Then Harbins *was ſworn.*

Mr. *Whittaker.* Did you meet the Priſoner at the Bar on the firſt of *March* laſt; and at what time?

Harbins. I met him in the *Strand*, as I was going home to my Lodging about eleven o'Clock: He was in Drink, and I ſaid to the Gentlewoman with me, Pray, have a Care of the Man, for he is in Drink.

Mr. Att. Gen. Whereabouts did you meet him?

Harbins. I met him about three Doors from the *Swan* Tavern.

Mr. *Whittaker.* My Lord, we will call ſome Witneſſes to his Reputation, to ſhew how he has all along demeaned himſelf.

Then John Michaelmas *was ſworn.*

Mr. *Whittaker.* Do you know the Priſoner at the Bar?

J. Michaelmas. Yes.

Mr. *Whittaker.* Do you live in the ſame Pariſh?—*J. Michaelmas.* Yes.

Mr. *Whittaker.* What are you there?

J. Michaelmas. The Church-warden.

Mr. *Whittaker.* What Behaviour is he of?

J. Michaelmas. Of very good Behaviour.

Mr. *Whittaker.* Is he diſaffected to the Queen and Government?

J. Michaelmas. I believe no Man better affected.

Mr. *Whittaker.* Did you ever hear him talk diſreſpectfully of the Queen or Government?

J. Michaelmas. No; quite otherwiſe: In *February* laſt he came to me, and aſked me, Do you hear what a Noiſe this Mob makes? Yes, ſaid I; I am ſorry for it; and I am ſorry too, ſays he: They ſay the Queen is aggrieved at it, and it troubles me to think of it.

Mr. *Whittaker.* At any times when there has been publick Rejoicings for any Victories, how has he behaved himſelf?

J. Michaelmas.

J. Michaelmas. The moſt forward Man in them.

L. C. J. Is he a ſober Man?---*J. Michaelmas.* Yes.

L. C. J. Does he uſe to drink?

J. Michaelmas. I have ſeen him in Drink.

L. C. J. What kind a Man is he then?

J. Michaelmas. A quiet Temper; not at all quarrelſome, but a fawning, loving Temper.

L. C. J. Did you ever hear him talk about the Meeting-Houſes?

J. Michaeemas. No.

L. C. J. I aſk that Queſtion, becauſe there has been a groſs Miſtake ſpread abroad as if they were ſerving the Queen, when they made that Buſtle; that is a Miſtake that has gone abroad.

L. C. J. Did you ever hear him ſay any thing of Dr. *Sacheverel?*

J. Michaelmas. Yes.

L. C. J. What did he ſay of him?

J. Michaelmas. He ſaid, he wiſhed the Sermon had never been preached, or printed; and then this Trouble had not been.

Mr. *Whittaker.* Did you ſee him after this?

J. Michaelmas. Yes, I ſaw him the next Day at Noon.

Mr. Att. Gen. Had you any Diſcourſe about the Meeting-Houſes?

J. Michaelmas. No, none at all.

Mr. *Darnell.* Where did you ſee him the next Day, and at what Time?

J. Michaelmas. At Twelve o'Clock I ſaw him paſs by my Door.

Mr. *Thomſon.* You have converſed with him: Did you never hear him give his Opinion of the Diſſenters, and the Meeting-Houſes?

J. Michaelmas. No; never.

Then Mr. Pottinger *was ſworn.*

Mr. *Darnell.* How long have you known Mr. *Dammaree?*

Mr. *Pottinger.* I have known him eighteen or nineteen Years.

Mr. *Darnell.* Do you take him to be diſaffected to the Government?

Mr. *Pottinger.* No; not in my Opinion.

Mr. *Darnell.* When you converſed with him, how has he declared himſelf?

Mr. *Pottinger.* Always for the Government as much as any Man in our Pariſh, and I believe has been as ſerviceable as any Man in getting Men to ſerve the Queen when he was Maſter of the Company.

L. C. J. What are you?

Mr. *Pottinger.* I call myſelf a Timber-Merchant.

L. C. J. Then I ſuppoſe you have not had much Converſation with a Waterman?

Mr. *Pottinger.* Not a great deal.

Then Mr. Moor *was ſworn.*

Mr. *Whittaker.* How long have you known Mr. *Dammaree?*

Moor. I have known him above thirty Years.

Mr. *Whittaker.* What Character has he had?

Mr. *Moor.* An honeſt, civil Man, and as good a Neighbour as can be.

Mr. *Whittaker.* How has he carried himſelf to the Queen and Government?

Moor. I never heard him ſay a Word againſt the Queen, or Government, but was always willing to ſerve the Queen; and particularly when he was Maſter of the Company, in ſending Men into the Service.

Mr. *Whittaker.* How did he behave himſelf in that?

Moor. He did great Service to the Queen.

Mr. *Whittaker.* Were there a great many Men taken up by him?

Moor. He took up a great many Men.

Then John Hatfield *was ſworn.*

Mr. *Whittaker.* How long have you known the Priſoner at the Bar?

J. Hatfield. Almoſt twenty Years.

Mr. *Whittaker.* How is he with reſpect to his Principles towards the Government?

J. Hatfield. I never knew any Ill by him: I never heard but he was an honeſt, careful Man: I never heard but that he lov'd the Queen.

L. C. J. As to the Matter of his Reputation, I think it is pretty well eſtabliſhed, and they ſay nothing againſt it.

Mr. Att. Gen. We come to try the Man for this Fact only, and have nothing to ſay to any former Tranſactions.

Mr. *Whittaker.* My Lord, we will call no more Witneſſes, unleſs the Queen's Counſel give Occaſion in their Reply. We think we have proved that he was not a free Agent, but under the utmoſt Force. We hope we have made it appear to the Satisfaction of your Lordſhip, and of the Jury, that this Man, though he had the Misfortune to be preſent when theſe Tumults and Diſorders were, yet he had no Share that was criminal in them.

Gentlemen, You will remember that though one Perſon did ſwear that he carried the Sconce in Proceſſion, yet we have proved that in point of Time it was impoſſible he ſhould be there, and that there was another Perſon that did it. As to the other Witneſſes, they take upon them to ſay that he did halloo with the Mob; we muſt appeal to you, the *Gentlemen of the Jury,* and don't doubt but you have taken Notice of what has been ſworn, that he was under a Force; and when he was in that Con[illegible]ion, and in fear of ſuch a tumultuous Aſſembly, if to ſave himſelf he did ſo far comply with them, that will not make him guilty of Treaſon, and levying War againſt the Queen.

I muſt obſerve as to *Orrel,* that Witneſs that ſeems to affect us moſt, and carries us ſo far as towards *Drury-Lane,* he does not pretend to give an Account of any thing that concerns us precedent to that. Now if this Man was got into ſuch a Tumult as this, and he did go along with them a little way, and they cannot ſhew that he acted any thing afterwards, there will be no Reaſon to think him guilty of any Crime, at leaſt, not of levying War, and ſo not of High-Treaſon. We hope we ſhall ſtand fair in the Opinion of the Jury, that he was not a voluntary or free Agent in theſe Diſorders: But if we ſhould be ſo unfortunate as to be thought otherwiſe, yet we muſt inſiſt, that *that* Point which the Queen's Counſel inſiſt on, to wit, That the Fact attempted to be proved on the Priſoner is levying a War, is not yet ſo ſettled a Point, but may deſerve a further and deliberate Conſideration. I am ſenſible there is one Caſe of the *London*

Apprentices, which was in King *Charles* the Second's Time; there was a Reſolution, that *that* Fact was levying of War, and ſo High-Treaſon; but I cannot but obſerve one thing that my Lord Chief Baron *Hale,* who can never be ſpoke of but with the greateſt Eſteem that may be, in the very Caſe mentioned, that he differs with the other Judges, and that he was of Opinion that *that* Fact was not levying War; and he grounded his Opinion upon that which we think was great Reaſon, and that is the Statute *primo Mariæ* 1. *Cap.* 12. It is not printed at large in *Keeble,* but it is in *Raſtall*; and on View of that Act, his Opinion is well juſtified, for that Act of Parliament ſhews, that all the ſeveral Facts for which the Apprentices, in King *Charles* the Second's Time, were indicted, as reported in *Keyling*'s *Reports,* all the ſeveral Circumſtances, that are in that Caſe, were not looked upon then to be High-Treaſon. But even in that Queen's Time, who had juſt Reaſon to be very apprehenſive of Tumults and Wars, is this Statute made, to make the Actors in ſuch Tumults guilty of Felony: And if ſuch Tumults did amount to levying War, and was High-Treaſon, it is ſtrange, That the Parliament ſhould make ſo unneceſſary a Statute as this, *primo Mariæ.* And before Queen *Elizabeth*'s Time, no one can give an Inſtance, that a Tumult of this Nature was looked upon, or adjudged as levying of War. That it was not ſo before the Statute of 13 *Eliz.* is plain, becauſe that Statute ſeems to be made on purpoſe to ſhew it was not a capital Offence, and that ſuch Tumults had not been adjudged levying War, and ſo not Treaſon, before that Statute of the 13th of Queen *Elizabeth*; and for that very Purpoſe, and to prevent ſuch Riots and Tumults, was that very Statute made: And the Proviſion made by this Statute of Queen *Elizabeth,* which was a temporary Law, was the Reaſon of the Reſolution in the Earl of *Eſſex*'s Caſe, and that Statute made his Inſurrection be adjudged levying War and High-Treaſon, and ſhews that it was neceſſary to have another Act beſides the 25 *Edw.* III. to make ſuch Tumults and Riots Treaſon.

The Caſe in *Keyling*'s Reports, of *Meſſenger,* and the others, ſuppoſing it to be Law, will not warrant the adjudging this Caſe to be Treaſon, in regard there appears to be many Circumſtances in thoſe Caſes in *Keyling*'s *Reports,* which are not proved in this Caſe now before your Lordſhip. But I muſt needs ſay, the Priſoner at the Bar has had ſo little Care taken of him, that I had no Notice of this 'till Eight o'Clock laſt Night, and have not had Time to look into the Caſes, and to be able to diſcharge my Duty to my Client as I ought; but I am ſure, the Gentlemen that appear for the Queen have ſo much Candour, that they will not deſire any thing in this Man's Caſe, but what ſhall be a Precedent in all future Caſes; therefore I ſhall ſtate the Caſes rely'd upon for the Authority of the Reſolution in *Keyling*'s *Reports,* as well as I can, upon this ſhort Notice. The firſt Caſe is in 2 *Anderſon, fol.* 5. it was the Caſe of the Apprentices of *London* and *Southwark:* They aſſemble together upon a formed Deſign, concerted and contrived amongſt them before, to break open the Priſons, to kill the Lord-Mayor, to burn his Houſe, and to ſeize ſome Arms in Houſes near the *Tower* of *London.* They had a Trumpet before them, and a Flag diſplayed with them, and that was adjudged to be levying War, within the 13 *Eliz.* I muſt obſerve, that this was an Opinion not given in Court, nor upon a ſpecial Verdict, but given privately, and not otherwiſe; ſo that we think the Authority in that Caſe will not weigh very much, though all the ſubſequent Caſes in *Popham*'s Reports, and *Keyling*'s Reports, are built on the Authority of this Caſe, and yet the Judges in this Caſe, in *Anderſon*'s Reports, rely for that Opinion on the Statute of 13 *Eliz.* and that Statute was on very great Reaſon made to prevent the ill Deſigns then on Foot by the *Roman Catholics.* There were many *Roman Catholicks* then began openly to ſhew their Averſion to the Reformation in general, and it was then, for the Preſervation of that good Queen and her Government, thought neceſſary to enlarge the 25th of *Edw.* III. and alſo to make the Deſign to levy War High-Treaſon during her Life only, ſo that *that* Caſe, in 2 *Anderſon,* was not reſolved on the 25th of *Edw.* III. but on the 13th of *Elizabeth.*

There is another Caſe, which was the Earl of *Eſſex*'s, and that was relied on as an Authority in *Meſſenger*'s Caſe in *Keyling*'s Reports; but that differs from this: There was a Deſign of the Earl to have Aſſiſtance from the City, and by Force to remove his Enemies from the Queen, and with armed Force to go to the Queen's Palace, and to her Perſon, and an actual Riſing and Appearing in Arms accordingly. This was conſpiring the Death of the Queen, and levying War in the moſt notorious Manner; and this was one of the Caſes relied on in *Meſſenger*'s Caſe: But here, in the Caſe now before your Lordſhip, there is no one Circumſtance reſembling the Earl of *Eſſex*'s Caſe. There is one Reſolution in that Caſe applicable to ours, and that is the Reſolution of the Judges, in the Earl of *Eſſex*'s Caſe, that where People by Accident came among, and were in Company with the Earl of *Eſſex,* and his Adherents, and afterwards departed upon Proclamation made, they ſhould not be guilty of the Treaſon. In the Caſe before your Lordſhip, it appears, the Priſoner came there by Accident; and we have ſhewn by Witneſſes, he quickly left theſe diſorderly People.

Another Caſe relied on in *Keyling*'s Reports, is, that in *Croke Car.* the Caſe of the People that beſet *Lambeth* Houſe; that was a moſt unjuſtifiable Act, done in Deſpite, and in the utmoſt Contempt of the Crown and Regal Dignity, and with an armed Force with Drums, and an armed Multitude; and the Reſolution in that Caſe, will be no Warrant for the adjudging this Caſe of the Priſoner Treaſon, ſuppoſing we ſhould not be ſo happy as to have our Witneſſes believed, that we were brought in by Force; for, in our Caſe, here are no Drums, nothing reſembling War, but only a tumultuous Rabble.

The Caſe of *Bradſhaw* and *Burton,* in *Popham*'s Reports, 122, is wholly built upon, and abſolutely depends on the Authority of the Caſe in 2d *Anderſon*; and yet in the Caſe of *Bradſhaw* and *Burton,* there was a previous Agreement, to go from Houſe to Houſe, and to pull down all Incloſures. It is true, that the putting this Agreement in Execution accordingly, is reſolved to be High-Treaſon. We think, that *that* Agreement, and Riſing according to it, is more than appears in this Caſe of the Priſoner at the Bar; and beſides, it is a Reſolution in the

39th Year of Queen *Elizabeth*, when the Statute of the 13 *Eliz.* was in Force, and depends on the Authority of the Caſe I have mentioned in 2d *Anderſon*'s Reports; and in our Caſe there is no Proof that we knew any Thing of this tumultuous Meeting, but that by Accident we fell among them. We hope, that if the Jury ſhall think there is any Colour to believe, that we have not anſwered by our Witneſſes (whoſe Credit is not queſtioned) the Evidence produced againſt the Priſoner, that this Point may be reſerved to us; for we apprehend, that it is not ſettled, that this Caſe of *Meſſenger*, and the others in *Keyling*'s Reports, is Law: But ſuppoſing it ſhould be Law, yet we hope it will not affect us; for it goes upon a previous Agreement, and all there were Partakers of it, and willing, and outrageous Actors in it, and knew of the Deſign before executed: And there was this Circumſtance, that when the Captain of the Guards came to appeaſe them, they aſked if it was the Duke of *York*; and when they apprehended it was the Duke of *York*, they called out, That they cared not for the Guards, and that they would come and pull down *Whitehall:* So that, by theſe Declarations, it is plain, the King and his Authority were aimed at. But in this Caſe of ours, there is nothing of reſiſting Authority charged on this Man, but that he came by Accident, and acted only by Conſtraint and Force, when unhappily amongſt a diſorderly Multitude: Therefore, my Lord, on the whole Matter, in regard we do, with Submiſſion, think, that the Law is not ſettled by the Reſolutions in *Keyling*'s Reports, but that a Review thereof may be admitted, and in regard we think our Caſe is far different, and a much better than any of the former Caſes, which have been looked upon or eſteemed as levying War, we hope, that in caſe the Jury ſhould think we are guilty of any criminal Act, that whether ſuch Acts be levying of War, or no, ſhall receive a further, and more deliberate Determination. I ſhall therefore take up no more of your Lordſhip's Time.

Mr. *Darnell.* My Lord, the firſt Time I heard from the Priſoner relating to this Cauſe, was laſt Night late; and muſt own my Opinion to be, that a longer Time is neceſſary to encounter the Authority of the Report of my Lord *Keyling*. But, my Lord, without diſputing the Authority of that Book, we muſt ſay, this Caſe comes far ſhort of that Reſolution; for there was a plain Hoſtility, a Captain, with a Sword drawn, Colours, two Meetings to conſult, and a Reſolution taken, a reſiſting and wounding the Conſtable, and ſtriking the Officer of the Guards, and their Intention to pull down Bawdy-Houſes, which might be any Houſe they thought fit to call ſo. As for the Caſe of *Oxfordſhire*, it is plain, there was an arming themſelves, they had put on Armour to act offenſively, as well as defenſively; they propoſed to come to *London*, and to have others join with them, and that Caſe was adjudged High-Treaſon. For the general Intention to pull down Incloſures: Where there is any Reſolution, that theſe great Tumults amount to High-Treaſon; it is on this Foundation, that the Deſign is general, and is an exerciſing of a Regal Authority, which Nobody but Her Majeſty ought to make uſe of. It is ſaid in *Meſſenger*'s Caſe, that the Intent muſt be ſuch, and that ſuch Intent muſt appear by ſuch Proof as will ſatisfy the Jury. Now how do they offer to prove the Intent of this Man? If there is any Thing to prove it, it is ſubſequent to the pulling down the firſt Meeting-Houſe, for it is plain he was not there till the Deſign was ſo far executed, and the Fire had been made an Hour before he came: Now if he comes there, and hallooes, and rejoices at it, that cannot make him Guilty. I agree, that if any Number of Perſons are going to commit High-Treaſon, and a Man meets them, and joins with them in the Execution of that Fact, he is Guilty; but if he be ignorant of their Deſign, and hallooes and rejoices with the Crowd, that will not make him Guilty: And in this Caſe, it appears, that every Body that paſſed by the Crowd that Night were conſtrained ſo to do; but where ſuch Perſon, who is got into ſuch a tumultuous Aſſembly, doth get off as faſt as he can, this cannot be High-Treaſon, or any Crime whatſoever. If the Priſoner had gone to *Drury-Lane*, and they had ſhewn that he did any Thing there, we ſhould have had a harder Caſe than we hope we have; but we think there is no Proof of the Intention of this Man to commit thoſe Facts of pulling down the Meeting-Houſes in general, and of aſſiſting in the Execution of that Intention. My Lord, if our Witneſſes (whoſe Credit ſtands unimpeached) be believed, it is impoſſible that he could be concerned in this Deſign, or the Execution of it, or know any Thing of it, 'till it was executed: For it don't appear, that on any of the Days, when the Mob were together, that he was among them, or that he acted any thing 'till after the Meeting-Houſe was pulled down, and the Fire made. We have ſhewn where he was all that Day, and that it was near Eleven when he came to the Fire. I think we have ſhewn, by the Waterman that carried him Home, that there was not room for him to bear any ſhare in this Outrage; for between the Time of his coming to the Fire, and going Home by Water, there is no room for him to do any Thing more, than to go between thoſe Places. There is no Proof that he did any Thing but what the Mob in a Manner forced him to do; and perhaps it might have coſt him his Life in ſo tumultuous an Aſſembly, or, at leaſt, ſome bodily Harm, if he had done leſs.

Mr. Att. Gen. My Lord, I beg leave to ſay a few Words, in Anſwer to what has been inſiſted on by the Priſoner. They have inſiſted on theſe three Things; Firſt, That notwithſtanding our Witneſſes have given that Account which you have heard, yet they are miſtaken in the Fact, for he was not the Man that they ſay was there bringing the Braſs Candleſtick; that it was another Man, a little Man in his own Hair, and not like the Priſoner, and therefore he is not Guilty of the Fact charged on him. In the next Place, they tell you, That admitting he was there, and that our Witneſſes have told you Truth, yet he was there unvoluntarily, and what he has done was under a Force, and therefore he can't be looked upon to be guilty of the Treaſon, becauſe, intentionally, he did not go along with them in that Deſign. The third is, That admitting you ſhould believe all that the Witneſſes ſay, that he was there, that he did know of this Deſign, and acted in it, in concert with the reſt, yet this Charge don't amount to High-Treaſon, and therefore he ought to be acquitted.

Now, tho' this is the laſt Thing mentioned, yet it is of the moſt Conſequence, and ought to be taken Notice of firſt; becauſe if he is guilty of the Fact, yet if it don't amount to Treaſon, he muſt be acquitted. They tell you it is a notorious Riot, ſuch a Tumult as is not to be endured; that a Puniſhment ought to be inflicted on thoſe People that were concerned in it: But they inſiſt on it, that this is not High-Treaſon, as charged in the Indictment. Now I think it is a plain Propoſition laid down, that whenever there is Force uſed againſt the Government; whenever there is a general Intention to work a Reformation; whenever there is an Oppreſſion complained of, and the People uſe force in order to remedy it, and there is an Aſſembly of a Multitude for that Purpoſe, it is levying War; for it is an Oppoſition to the Government, and the Civil Magiſtrate.

My Lord *Coke* in his Comment on the Statute of Treaſon, takes Notice of this, and ſays, That if any go about by Force to reform any thing they complain of, it is levying War; becauſe they take upon them Royal Authority, which is againſt the King. The Caſe they mention of *Bradſhaw*, where a great Number aſſembled, in order to ſettle the Rate of Wages, they thought there was not enough given them for their Labour: They did appear in publick in order to redreſs that Grievance; and that Appearance in publick was looked upon to be High-Treaſon.

It is not proper here, to enter into all the Caſes that may be cited; the laſt Book they take Notice of is my Lord Chief-Juſtice *Keyling*'s, which was printed with the Approbation of all the Judges of the *Queen's-Bench*; and every body knows that he was as great a Judge, particularly in the Crown-Law, as any that went before him. And it is the Opinion of all the Judges, excepting one, that *that* Caſe is Treaſon; and you ſee on what his Opinion was founded, that it was not High-Treaſon, becauſe there is a particular Act of Parliament which ſays, That in Caſe Proclamation ſhall be made for them to depart, thoſe Perſons that do not depart on that Proclamation ſhall be guilty of Felony. That Act relates only to the Meeting and Aſſembly on a private, particular Account; for if a Lord encloſe a Waſte, and the Tenants riſe in Oppoſition to that Act, in order to redreſs that Inconvenience, Nobody will pretend to ſay, it extends to High-Treaſon; becauſe it is a private Inconvenience that goes no farther than that Manour. But at the ſame Time that they made uſe of this Diſtinction, it is taken notice of, That if there be a publick Law, that is looked on to be the Grievance, and they came to redreſs the Grievance ariſing from that Law, that is oppoſing the Publick, and is High-Treaſon.

Now, to compare theſe Caſes: There was a Deſign on *Tueſday* Night declared among the Mob, that on the next Day they would deſtroy all the Meeting-Houſes thereabouts: Sure none will ſay (let their Opinions be what they will), that deſtroying a Meeting-Houſe is more Service to the Publick, than deſtroying a Bawdy-Houſe? And yet their meeting to pull down the Bawdy-Houſes was adjudged to be Treaſon. And ſhall they be hanged for pulling down Bawdy-Houſes, and have nothing but a Fine for pulling down Meeting-Houſes? Every body knows they are allowed by Law. The Act of Parliament that gives Indulgence to the Diſſenters, allows them to meet in thoſe Places: It were to be wiſhed, there were no ſuch Perſons that did diſſent from the Church; but theſe Places being allowed by Law, it is lawful for them to meet there. Now for People to find fault with this Law, and to ſay, We will redreſs this Inconvenience: Though the Publick will not throw theſe People into Jails for meeting there, we will pull down their Houſes about their Ears; this is an Inſolence not to be ſuffered. This is aſſuming an Authority that don't lie in the People; every body that lives under a Government has Courts of Juſtice to apply to, and when any Thing is acted contrary to Law, the Courts of Juſtice are open; and I may defy any one to ſhew that there has been a Denial of Juſtice upon due Application.

Now for People to meet together to do right to themſelves, and to be Judges and Executioners at the ſame time, is never to be borne, but deſerves the moſt ſevere Proſecution; and it is a Senſe of this that brings this Cauſe here. For, as to the Man, I never ſaw him before; Nobody bears him any ill Will; but it is known that there have been theſe Riots and Rebellions committed; and it is agreed that he was among them. This brings me to take Notice whether our Witneſſes are miſtaken in ſaying he was there: They knew the Man; they ſpoke with him; and they are poſitive to him; and they give a particular Account of what he and they ſaid, and what they ſaw him do; and now they ſay, our Witneſſes are miſtaken. As to the Hours, little is to be depended on, becauſe People are ſo uncertain in their Computations: It is plain they were all ſuppreſſed by Twelve o'Clock, ſo that he might ſtay as long as any, and yet be in Bed by Twelve o'Clock, for by that Time the Guards came and ſuppreſſed them. They give an Account of him till Ten o'Clock; I find there was no Buſineſs that detained him till that Time; he had nothing to do in the Alehouſe; he was got drunk, and he ſtaid in this diſorderly Place till the Time was proper for him to come out, and tranſact this Matter. For it was about Ten that one of our Witneſſes ſaw him at the Meeting-Houſe, and at the Fire, and he went along with him towards *Drury-Lane*, and there he left him: And this agrees with what his own two Witneſſes ſay; they ſay, they ſaw him by the Duke of *Newcaſtle*'s Corner, coming from *Queen's-Street*, and going towards the Fire: It was after this, that he had hallooed them away to *Drury-Lane*, and was again returning; it is plain by the Evidence of both Sides, that he was there. All that they inſiſt on, is, that he was forced into the Crowd; but how agreeable is that to the Story of the Witneſſes that ſaw him bring the Sconce, and carry it in Proceſſion round the Fire, and throw it in?

He calls *Wood*, who tells you he was his Friend; that he had been with him all Day. He tells you, that they received News that there was a Fire in the *Strand*; that the Priſoner was concerned for a Gentlewoman that lived there, and that they went away immediately to aſſiſt her. *Wood* ſays, he went with him as far as *Temple-Bar*, and there the Crowd was ſo great, that they were forced by the Torrent of People up *Sheer-Lane*, and through *Lincoln's-Inn-Square*, and they could not get away

away till they were crowded through the little Gate, and there they took hold of and forced him to do all that he did: We must leave that to your Consideration; but we think it very extraordinary. But the other Witnesses do contradict it; *Ward* and *Giles* say, that he stood and talked with her, and she told him first of this Riot, and that he was then alone and Nobody with him. I will not repeat the particular Circumstances that have been proved: That he was there they have proved; and we have proved, that there was a general Design of pulling down these Meeting-Houses. We cannot prove the Design of any Man but by his Actions. If a Man meet with People that have before laid a Design, and he acts with them, the Law says, the Intention of every Man there is to do what was the Design of that Meeting. The Design was to pull down these Houses, and they did execute it; and it being done by Force, we think it does maintain the Indictment, and that he is guilty of the Fact charged on him, and we submit it to your Lordship and the Jury.

Mr. Sol. Gen. My Lord, there are two Points to be considered in this Case: *First*, Whether this Tumult be a levying War, and High-Treason? And in the next Place, how far the Prisoner may be concerned in it, Whether what he has done, has made him equally guilty with the others, supposing the general Design and the Execution of it to be High-Treason?

We take it that this Design, to pull down these Meeting-Houses, was a general Design; and being a general Design, and done upon pretence of Reformation, and in Defiance of the Law, that this is High-Treason, and levying War; and Facts of this kind in all Ages have been adjudged so. The general Design is proved by what followed, by the Action, by pulling them down; for we have proved that four were pulled down, and that there was an Intention, or Declaration that they would pull down Meeting-Houses. What is this Design against? It is against the Queen: It is levying War within the Realm, which I take to be a material Word in the 25th of *Edw.* III. It is levying War against her Sovereignty, her Power and Authority, in Matters which she, either as concerned in the Legislature, or in the executive Power of the Govern ment, may reform and correct. The taking Arms in defiance of any Law, or to correct any Abuse, or to deprive the Subject of the Benefit of any particular Act of Parliament, is levying War and High-Treason, and so adjudged by the Statute of Queen *Elizabeth*. The Case of the was long before that Time; the Case of Inclosures was a private Interest, yet the getting a Number of People together, in order to throw down all Inclosures, is adjudged to be High-Treason; and that Resolution has always been affirmed. That is the Interest of private Persons, and therefore will shew, that what they insist on of the other Side against the Queen, is of no Consequence; for if it was levied against her Authority, with Submission that is High-Treason: the taking up Arms against it, though there was no immediate Intention against her Person, or to destroy her. Indeed it has been common to lay a Design to compass and imagine the Death of the Queen, and the Overt-Act of the Treason has been the Proof of that Design; there the compassing is the Treason, and the Overt-Act is only the Proof, and therefore a Design must be laid in that Case. But in Cases of this Nature, the levying War is the Treason, and therefore the proving the levying War is sufficient, without laying any Design to compass or imagine her Death. Now that this is against the Queen, and her Sovereignty, is most plain, because it is certain these Meeting-Houses are tolerated by Law: The Dissenters are indulged in the Exercise of the Worship of God in their own Way, by the Act of Parliament: That Act of Parliament can be taken away by nothing but an equal Power: in which the Queen must give her Assent, and it must have her Concurrence. The Queen has the Administration of Justice under her Care, therefore taking up Arms to destroy Meeting-Houses in this Manner, is levying War against the Queen, and levying War within the Realm; to invade that Right which by the Laws of the Kingdom these People are entituled to: For the Law has given this Right. Now to take up Arms to violate that Right is High-Treason, and is a stronger Case than any that have been mentioned and agreed to be Law. The Case of an Inclosure is a private Interest; the taking Arms to enlarge a Highway is so; to destroy Bawdy-Houses is so; to take up Arms to remove a publick Nuisance, which ought to be the particular Care of the Government, that is levying War.

They have insisted upon the Statute of the 13th of *Elizabeth*, which they use as an Argument to shew that this was not Treason within the Statute of *Edward* the Third; but that Act was to make a Conspiracy to levy War High-Treason. But then how stood the Case of the Inclosures at that Time? Several People conspired to throw down Inclosures, and that was adjudged High-Treason, because it was a Conspiracy to levy War; and how could that be High-Treason, if taking Arms to throw down Inclosures were not so? We take it, that the Case in *Anderson* is full in Point, and these Cases are affirmed by the Judges in the Case of *Messenger*: So that it is the greatest Authority, and never to be shaken. They say the Case in *Anderson* is a private Opinion; it is the Opinion of the two Chief Justices, and the Master of the Rolls; the others are the Opinion of all the Judges: So that it is such an Authority as never can be shaken.

This shews the Foundation that there is for this necessary Prosecution, that People may see that it is not in the Power of every Man, according to his own Fancy, to find Fault with the Government, and alter the Laws, and deprive the Subject of any Benefit he is entitled to by Law, it is an Invasion of the Royal Authority; they may by the same Reason fall upon a Man's Person, as they may pull down his House; and things of this Nature must run into endless Confusion, and none can be safe, unless People that are thus Guilty be brought to Punishment.

These Authorities then being so strong, we hope, that, as the Case stands, on the Evidence for the Queen, that the Prisoner has been proved guilty of the Charge in the Indictment: For that there was a general Design, appears by what was done in the Execution of it. The only Question is, Whether this Man was privy to any precedent Design? And for this, I rely on the Lord *Essex*'s Case, in *Moor*'s Reports, which was settled by all the Judges in *England*. I say, that it is not necessary to prove any such previous Intention, any more than if a Man should be so bold as to murder a Judge on the Bench, must you prove that there was any Design? Don't the Blow that was given shew the Design? And is it not High-Treason in case of counterfeiting the Coin? Must you prove an Intention? No, the Treason is in the Fact, and not in the Intention: Where it is in the Intention, as compassing the Death of the Queen, there must be an Intention proved; but where it is in Fact, where the Fact is Treason, no previous Design is necessary to be proved, in any Case whatsoever: The Fact itself is the Treason, and speaks the Design; and the Man that commits Treason, must do it with a treasonable Intention. And in the Lord *Essex*'s Case, it was adjudged, that my Lord *Southampton*, who joined with him in that Fact, which was adjudged levying War, was guilty of the same Treason, though he did not know of the Design of the Lord *Essex*, but thought he meant only to remove some particular Enemies of his from the Queen.

They say, if he was there, he was only there by Force: As to his coming there, I think it is as fully proved as can be; but say they, it was not he that threw the Sconce into the Fire, for he was at another Place at that Time, for that was thrown in at nine or ten o'Clock, and he was then elsewhere. I wonder this should be insisted upon, it being only a small Variance in Time; and as he was observed to do the Fact, it is not material as to the Hour: Therefore, unless what the Women say is an Answer to that Evidence, it still remains unanswered; and as to what they say, we must submit it, whether it can be believed, whether they deserve that Credit; whether a Man that stood by, and saw every thing that passed, and followed him up the Street, to the Fields; whether they can deserve that Credit that this Man does; for what they saw was only at the Fire. They agree a Waterman did it, but it was a short Man in black Hair, and they saw him only by looking under some People's Arms; they could not discern so particularly as this Man, that saw him come out of the House, and followed him: But whether he was concerned in that Act or no, is not material. His going from the Fields, and hallooing the People to *Drury-Lane*, is a Matter they have not answered, they have given no Evidence to answer that; and if that were so, it is a sufficient Evidence of his levying War; that is enough, his saying, he would lead them, and encouraging them to go with him; that, no doubt, will be a full Evidence, joined with his being at the Fire, which is proved by five or six Witnesses; and this is contradicted by nothing, but saying, he did it by Force, and if that were Fact, then certainly he would not be guilty: But on what does this depend? On two Witnesses; on *Wood*, whom, I think, Nobody can believe, for he contradicts himself, in coming to the Place, and going from it again; and how defective he was in every Point, I doubt not your Lordship and the Jury have observed. But when they call their other Witness, they make it clear: for if any Credit is to be given to their other Witness, *Wood* is not to be believed, for he says, the Prisoner left the Alehouse to serve a Friend in the *Strand*, and that he went along with him; but this is contradicted by the other Witnesses, and it appears that he was not with him in *Fleet-Street*. *Cummins* says, the Prisoner was drunk, and thrust about by the Mob, from one to another; but he don't prove he was under any Force, if he had, they would have treated him otherwise, but they are continually justling, and playing with one another; and though other People were threatened, that don't prove that he was. They say he was drunk, that is no Excuse at all. I was willing the Jury should have all the Circumstances before them, and therefore joined in asking that Question; but it cannot be material, nor is he more or less guilty, whether he was drunk, or sober; so that we take it, there is no Evidence that he was under any such Force, as put him under a Necessity, for his own Preservation, to join with the People in this Tumult. If he was not under an absolute Necessity, he cannot be excused; so that it is plain, they have not answered that Matter at all. And as to the two Women, that never saw him before, but met him coming back to the Fire; and as to the Proof, that he was at Home at twelve o'Clock, that is no ways inconsistent with our Evidence. The Matter of Reputation is no ways to be considered in this Case: I would not say any Thing more, but you hear what was the Noise of the Mob; and that Cry and Hurry that was made on this Occasion was in defiance of the Justice of the Nation, which was then carrying on in the most solemn Manner. But we submit it to your Lordship, that this Fact, this Design, executed in this Manner, is plainly levying War, and High-Treason; and the Prisoner at the Bar, by the Evidence that has been offered, is guilty of the Fact charged against him in the Indictment.

Mr. *Thomson*. My Lord, I would beg Leave to add a very few Words. As to what the Gentlemen for the Prisoner insist on, in point of Law, that this don't amount to levying War, it has been spoke to so fully, that I will not waste your Lordship's Time unnecessarily: The Rule of Law is very plain, that wherever any Number of Persons shall assemble together of their own Heads, without Warrant, pretending a Reformation of what they think an Abuse, this is an invading the regal Authority; and if that Design is executed, 'tis levying War, and High-Treason, in all, as well those that conspired, and were not at the Execution, as those that were aiding in the Execution, and were not in the Conspiracy: As to what is mentioned of pulling down Inclosures, if it be a particular Inclosure, 'tis true, it is only a Riot; but wherever there is an Intent expressed, to pull down one, and then another, and so on, that is levying War, and High-Treason. And here you have had a Proof of an Intent to pull down Meeting-Houses, and an actual Execution of that Design in several: Whether this Man knew it or no, is not material; if he is aiding in the Execution of that Treason which was designed by others, he, under favour, must be guilty of Treason too. And so is the Case of my Lord *Essex*, which has been mentioned; and so says my Lord *Coke*, in the 3d Report; and my Lord *Hale* himself, in his *Pleas of the Crown*: And this Case goes

goes farther than that in my Lord *Keyling*, of the Bawdy-Houſes, for they were Abuſes removeable by Law; but theſe Meeting-Houſes are ſo far tolerated by Law, that 'tis not in the Power (I may take leave to ſay) even of the Crown, to commiſſion any to ſuppreſs them. The Queſtion, my Lord, as to the Fact, is, Whether he has been proved to be aiding and aſſiſting in the Execution of this Deſign? The Evidence for the Queen has ſworn as to ſeveral Circumſtances; his going to the Meeting-Houſe; bringing out the Sconce; carrying it to the Fire; throwing it in; and going from thence to *Drury-Lane*, to pull down another Meeting-Houſe, at the Head of the Mob, leading them on, and encouraging them to follow him; that they did follow him, and did pull down that Meeting-Houſe. What do they ſay, my Lord, in Anſwer? They produce a great many Witneſſes, ſome that are inconſiſtent with the others, and ſome that do not deſerve much Credit. They ſay, we are out in point of Time; that he was at the Alehouſe 'till half an Hour after Ten, ſo could not throw the Sconce in the Fire, as the Witneſs ſwore. I muſt obſerve, that the Witneſs was poſitive as to the Man that he ſaw, and the Fact; but as to the Time, though he at firſt declared it about Nine or Ten, yet, when preſſed as to the Certainty, he anſwer'd, he could not be poſitive as to the Time. Then they ſay, that the Priſoner was driven to the Fire, and that *Wood*, the Witneſs, was with him, and ſaw him forced by the Mob. Mrs. *Giles*, another of their Witneſſes, ſays, that *Wood* was not with him when he was going to the Fire. Then, as to the Innocence of his Intentions, 'tis ſaid, the Priſoner left the Alehouſe, to help a Gentlewoman in the *Strand*, upon the News of the Fire; but the Poſtillion that brought the News, came to him ſoon after Eight, and the Priſoner did not go then, but ſtaid 'till after Ten, ſo that is only a Pretence of Excuſe, but no real one. Then they ſay, what he did at the Fire was not as a free Agent, but by Compulſion: As to that, we have proved, that he did not only halloo, and throw up his Hat and Wig, and huzza, and make Proceſſions before the Fire, but that he made a Soldier pull off his Hat, and huzza, and do as he did, which ſeems to be ſomething different from Compulſion.

My Lord, the other Facts, beſides the Sconce, have been proved by ſo many Witneſſes, that it is not very material, whether that be true or not; but even, as to that, the Circumſtance of Time is ſo very trivial, ſince the Witneſſes would not be poſitive to that, there is little room for doubt of it. However, as to the reſt, 'tis very plainly and fully proved, and we ſubmit it to your Lordſhip and the Jury.

L. C. J. Gentlemen of the Jury; *Daniel Dammaree*, the Priſoner at the Bar, ſtands indicted for High-Treaſon; for that he, on the Firſt of *March* laſt, in the Pariſh of St. *Clement Danes*, did, with a great Multitude of Perſons, to the Number of Five Hundred, armed with Swords and Clubs, raiſe and levy publick War againſt the Queen.

There are two Things inſiſted on to bring this Matter to two Points by the Counſel of both Sides: One is as to the Fact, which will be proper for your Conſideration, to conſider the particular Circumſtances: And the other, as to the Law; how far it will amount to High-Treaſon, and that is what it is the Duty of me, and the other Judges here, to direct you in. I ſhall firſt ſtate the Fact as it ſtands on the Evidence, and then point out, as well as I can, where it will reſt for your Conſideration; and if I miſtake, I am ſo well aſſiſted, that I am ſure it will be ſet right. As to the Fact; the firſt Witneſs produced is *Tolboy*, who don't ſpeak any thing to charge the Priſoner particularly, but gives an Account, that upon the *Tueſday*, the Day before this Matter for which the Priſoner is indicted, he paſſing through the *Temple*, ſaw a great Number of Perſons that had conducted Dr. *Sacheverel* to his Lodgings; there he heard a Diſcourſe of pulling down the Meeting-Houſes: Dr. *Burgeſs*'s was named, and ſome were propoſing to have it deferr'd 'till after the Trial; but others would have it the next Day. What the Reſult of that Diſcourſe was, he don't know, for he made no Stay; he paſſed through them, and left them diſcourſing.

The next Witneſs was *Orrel:* He gives a particular Account of the Priſoner, and the Meeting-Houſes he had any Concern in the pulling down. He ſays (after he had obſerved ſomething of a great Mob gather'd together, a Night or two before), that he was at a Coffee-Houſe, where Word was brought, that they were pulling down Dr. *Burgeſs*'s Meeting-Houſe; he went to ſee what they were doing; he was in the Meeting-Houſe three or four Times, and went to and fro. He takes Notice, that there was a little Man in the Pulpit, pulling that down, and that appears to be pretty early: That about Ten o'Clock he had Notice of their pulling down another Meeting-Houſe: That he went to *Fetter-Lane*, and there was the Conſtable inſulted to ſuch a Degree, that he was forced to go off: That Meeting-Houſe was pull'd down, and burnt in *Holborn*; the Materials of Mr. *Burgeſs*'s were carried into *Lincoln's-Inn-Fields*, and burnt there: That thence he went round, and came into *Lincoln's-Inn-Fields* again, and found them very buſy about that Fire. He tells you what Queſtions were there aſk'd, and what Inſtigations were uſed one to another: One aſked, Where is the Lord *Wharton*'s? And others, Where is the *Bank?* And the Cry was, To the City, to the *Bank*, and Damn them, we will have all the Meeting-Houſes down; and afterwards *Dammaree* was one of them that uſed that Expreſſion himſelf: That then he took Notice, that from the Middle of the Fields there divided a ſmall Body, and he took Notice of a pretty tall Man leading them on: I was then, ſays he, too far off to diſtinguiſh him; but he ſays, he kept his Eye on him, and coming nearer, he found it was *Dammaree:* That he call'd on them to go to *Drury-Lane*; and that ſome propoſing to go to *Wild-Street*, ſome of the Company ſaid, That was but a Bird's-Neſt, that in *Drury-Lane* was worth a great many of it; *Dammaree* all the Time encouraging, and damning them to come on, and the Cry was, High-Church and *Sacheverel*. Being thus attended, Part of them went towards the Arch; the other Party, which *Dammaree* led, went towards *Great Queen-Street:* That he ſaw them go into *Great Queen-Street*, and then he ſaw no more of *Dammaree*. He ſays, that he went into *Drury-Lane*, and there they had pull'd down another Meeting-Houſe, and were burning it; that the Guards coming thither, he met them, and told them, the great Body was in *Drury-Lane:* That when he came there, the Guards were reſiſted by them. One Perſon he mentions particularly, but it was not thought material to go into that; he drew his Sword, and ſaid, Damn them, he did not care for the Guards, nor the Parliament neither; that there were Swords drawn, the Officers and Soldiers were attack'd, and that they ſaid, They would fight the beſt of them. *Dammaree* don't appear to be there, for theſe are the Perſons that he had led on, but what was become of him don't appear but by his own Witneſſes. On this, Mr. *Orrel* went away; for there was a Rumour, that a Body was gone to the *Bank*, therefore he thought to lead the Guards thither, that being of greateſt Conſequence to the Publick; and thoſe Perſons that had it in their Heads to go thither, knew they ſhould have given a great Blow to the Credit of the Nation, if they could do any thing there: That he found, inſtead of that, they were gone to *Black-Friers:* That he call'd on the Captain of the Guard, and ſhew'd him the Way to the Meeting-Houſe there. This is the Account he gives of the Matter.

The next is *Collier:* He ſays he ſaw *Dammaree* in *Lincoln's-Inn-Fields*, at the Fire, bring the Branch from the Meeting-Houſe: That he carried it three Times round the Fire, in a Sort of Proceſſion, huzzaing, and then threw it in. He gives an Account of ſomething elſe that was brought there, and carried likewiſe about in Proceſſion. The firſt Witneſs obſerves, that he threw up his Hat and his Wig both, that you may not miſtake him for the Man in his own black Hair; and another being aſk'd, What he had in his Hand? ſaid, He had nothing but his Wig; and you will conſider, whether the Hair he had on then, was not the ſhort Hair that the other Witneſſes ſpeak of.

The next Witneſs ſays, That he ſaw him at the Fire firſt about Nine: That he believes he was there two or three Hours; and that he call'd upon them to go away to *Drury-Lane*, and that he went with them that Way. As to the Meeting-Houſe in *Drury-Lane*, none ſay that they ſaw him there.

Still ſays, That he ſaw *Dammaree* in the Alley about Eleven, and ſays, there was then a Fire in the Fields; and he only ſays, that *Dammaree* halloo'd among the reſt: But it may be material, by and bye, to conſider his being in the Alley about Eleven; for when you conſider the Evidence of the Women, of bringing the Branch to the Fire, and that the Fire was dead burnt when they went away; you will then call to mind, that the bringing the Branch was one of the laſt Things.

Mitchell ſays little more, than that he ſaw him hallooing, and throwing up his Hat; and that it was about Eleven o'Clock. This therefore only confirms that he was there, and that he was in the Alley.

The next was *Morgan:* He ſays, that hearing of a great Tumult at the Meeting-Houſe, he went thither, and found them at work, and a Fire was made before he came: That *Dammaree* was there, in his Waterman's Coat, which is a Circumſtance all the reſt do agree in: That he encouraged the Mob very much: That he walk'd round the Fire with the Bedſtead that was thrown in, and ſome other Things were thrown in afterwards. This Man aſk'd them, What they were doing? The Guards are coming, and they ſaid, Damn the Guards, and the Parliament too, we are ready to face them all. When they enquired where that Man was that ſpoke of the Guards, (for he was a Diſcourager of the Buſineſs) thereupon he got off, and went away. He ſays, he ſaw the Doors of the Meeting-Houſe thrown in, after they had been carried in Proceſſion; and that it might be Half an Hour after Ten, or more.

The next is *Eaton:* He ſays he ſaw him at the Fire, and ſaw ſeveral Things brought to the Fire, but did not ſee him bring any Thing; but *Dammaree* appear'd as one of the principal: And that *Dammaree*, and ſome others, compell'd a Soldier to pull off his Hat, and that *Dammaree* ſpoke to him particularly; and the Time he ſpeaks of is about half an Hour after Ten.

This is the Streſs of the Evidence for the Queen, by which, ſuppoſing that there was nothing ſaid to oppoſe it, it is fully made out that he was engaged with thoſe other Perſons that did pull down Mr. *Burgeſs*'s Meeting-Houſe, and aſſiſt in carrying the Things to the Fire in *Lincoln's-Inn-Fields*, and burning them: That he led them away to *Drury-Lane*, and that he and others ſaid they would have all the Meeting-Houſes down. There was an Oppoſition given to the Guards, and you will find that the like was done in other Places.

Now you are on the other hand to conſider what Defence is made for the Priſoner, and by that, to weigh what Credit you will give to this Teſtimony on the Behalf of the Queen. They attempt to give an Account where he was all that Day, and by that they would ſhew, that the Witneſſes produced for the Queen muſt be miſtaken; becauſe it is impoſſible he ſhould be there at the Time they ſay he was, for they undertake to ſhew from Ten in the Morning 'till Eleven at Night, where he was. And another Thing they inſiſt on is, that what he did was by Force and Violence; tho' they don't deny he was there, yet ſay they, he did nothing more than the Queen's Witneſſes did: They pulled off their Hats, and made the ſame Outcries for their own Safety. They ſay likewiſe, that the Man was in Drink; and I know not what Uſe they would make of that, whether by way of Excuſe of his Crime, or whether it is to ſhew that he could not do what he is alledged to have done. They call *Allen* and *Pink* to ſhew where he was in the Morning; they only ſhew how early they began to drink: And as *Wood* ſays, he continued it till after Ten at Night.

The next is *Wood*, and he is material, if you can give Credit to what he ſays: He ſays, he was at the *Bell* in *Water-Lane* 'till a Quarter after Ten; that there came in News that there was a Fire in the *Strand*, and that was the Reaſon of *Dammaree*'s going out; that he ſtarted up, and ſaid there was a Gentlewoman in the *Strand* that was an Acquaintance of his, and he would go and help her; that thereupon he and *Wood* went out to aſſiſt this Gentlewoman. It fell out, that as they were going through *Temple-Bar*, there was ſo great a Multitude that came out of the *Strand*, that they ſtopt them, and they were carried along with the Stream up *Sheer-Lane* through *Lincoln's-Inn*, through the Wicket, and there the Mob ſeized him, and would have him along with them. I am ſorry, I muſt needs ſay, that we are forced ſometimes

to

to ſee ſuch Men brought into a Court of Juſtice; I would not take Notice of it, were it not flagrant and viſible to every body's View. In the firſt Place, it is inconſiſtent with itſelf, that he ſhould be going along *Fleet-Street* by the *Temple* at Ten, or between Ten and Eleven, and that there ſhould be ſo great a Crowd, when the Fire had been three Hours before, as they would have it. From what Place could this Mob come? There is no Account of any Aſſembly of a Mob that had been that Way; but if they were ſtopt from going along, how could they get croſs the Street? For it was more eaſy to go along by the Walls, than to croſs the Street; and how could he get into that Stream? He muſt force himſelf into it firſt; and how could that great Crowd get into *Sheer-Lane?* Then in *Lincoln's-Inn* you are got into a large Place, and in that large Square, unleſs a Man would lay hold on him, it is impoſſible to drive him through that narrow Paſſage at the Wicket. Then what became of him after, he cannot give any Account: Sometimes he went by the dead Wall, ſometimes by *Sheer-Lane*, and ſometimes by *Chancery-Lane*. Then he is aſked where they ſeized *Dammaree?* He ſays, againſt the dead Wall: I believe every body knows there is no dead Wall 'till you come to *Lincoln's-Inn-Fields*, and that he who turned on the Left-hand from the Mob could not ſee them ſeize him there. But all that he ſays is overthrown by the other Witneſſes, for they contradict him as to his going to aſſiſt this Gentlewoman; no, he ſtaid an Hour after the News: Nay, that you may have an Inſtance of the Uncertainty of the Computation of Time, that Witneſs, which is *Biſhop*, ſays, the News was brought him at half an Hour paſt Eight, and that he ſtaid 'till half an Hour paſt Ten; and then being aſked, How long after the News was brought he went away, he ſays, About an Hour: And this is an Inſtance that People are not exact in giving an Hour on ſuch Occaſions.

Fucard came next: He ſays only that he was in Drink. But that Part of *Wood*'s Evidence, whereby he would have you believe that he went in Kindneſs to help the Gentlewoman, is contradicted by *Biſhop*; for he ſaid, they had a Supper after the News of the Fire; and the Poſtillion ſays, that he ſtaid an Hour at leaſt.

Ward and *Giles* give this Account: That he was at *Giles*'s Shop in *Fleet-Street* about half an Hour after Ten, which is about the Time that he went away from the *Bell:* That he ſtaid there 'till three Quarters of an Hour after; but they both contradict *Wood*, for he ſays he went with *Dammaree*; but they ſay, he was not with him. She gives this Account: That they heard there was a Fire in *Lincoln's-Inn-Fields* long before this; that they heard of it about Eight o'Clock, and that about that Time they ſaw two Men with Irons, which they ſaid were the Irons of the Pulpit; and he ſays, that he knew them; which does prove that the Buſineſs. She was aſked, How ſhe knew him to be the ſame Man? and I think ſhe gives a good Account of it. She takes Notice of one thing that ſome aſked him, Who he was for? He did not make Anſwer that he was for *High-Church* or *Sacheverel*, or any thing of that; but gave a civil Anſwer: You ſee who I am for; I am for the Queen.

Cummins ſays, that he ſaw a Waterman in the Queen's Coat, and that he ſaw him receive a Blow on his Head for not taking off his Hat; and that he ſaw him puſhed to and again; and that he ſeemed to be very drunk; and this he mentions to be about Eleven o'Clock.

The next are *Reading* and *Prince*; they came together, and went together: They ſay, they ſaw the Sconce brought by a ſhort Man in his own black Hair, and that this Man had on a Waterman's Coat with a Badge, but they could not diſtinguiſh it; they could not diſtinguiſh the Colour of the Coat, but his Hair was black, and he a little Man; and though they were not near him, yet they were near *Dammaree* ſoon after. About three Quarters of an Hour after, going homewards, they went towards *Queen-Street*, and there they met *Dammaree* (that was about Eleven) coming from *Queen-Street*, and going to the Fire. It ſeems they had ſome Talk with him, and he kiſſed one of them, and they are ſure that this is the Man, and there they find him at Eleven. *Cummins* ſaw him at the Fire at Eleven, and he was with Mrs. *Giles* three Quarters of an Hour after Ten. Theſe Women ſay, when they obſerved this ſhort Man, they were without the Mob: when they came to the Fire, there was a great Mob about it; and as you have heard from others of the Witneſſes, that there were ſome Thouſands, you may imagine them ſome Hundreds. They were behind the Mob, and he a ſhort Man: and they were aſked how they could ſee or obſerve him? They ſay, they diſcovered him as they looked under the Arms of ſome of the People. You will have ſome Regard to this Evidence by-and-bye.

The next is *Walker*, who is a Waterman, and ſays, he took up *Dammaree* at half an Hour after Eleven, for he took Notice of the Clock; and there is Reaſon to think, that while he was waiting in his Boat, he might obſerve the Clock: He therefore I believe may be relied on. He ſays, he carried him croſs the Water, and ſet him down at, or near home; and therefore you may believe he did no more.

Hales ſays, That ſhe met him at the *Strand Bridge* near Eleven; there could not be much difference in that Time. *Harbins* ſays, ſhe met him with *Hales*, and it was about Eleven.

This is the Evidence as to the Facts: They have called others to give an Account of his Reputation; and as of the one Side his Reputation is not attempted to be ſhaken before this Time, ſo they have brought Witneſſes to prove him a firm Man to the Church and Queen, and a peaceable Man. He took Notice of the Proceedings of Dr. *Sacheverel*, and as one of the Witneſſes ſays, he wiſhed that Sermon had not been printed, and then we had not had this Buſtle; and that ſhews, in that Inſtance, an Inclination not to be engaged in ſuch a Mob as this. They ſhew other Inſtances of his preſſing Seamen for the Queen; and this is the Strength of the Evidence on the other Side.

As to the Uſe they would make of the Difference in point of Time, I would obſerve, that it is difficult to ſet that right among his own Witneſſes; and it is almoſt impoſſible to be exact to half an Hour. For *Giles* ſays, that he came to her Shop at a Quarter after Ten, and the other Witneſſes ſay, he did not leave the Alehouſe 'till half an Hour after Ten: But this is no Objection. It is not to be expected that People ſhould be ſo exact upon ſuch an Occaſion; therefore how does this oppoſe the Evidence of the other Side? If they had not brought ſome Witneſſes themſelves to prove he was there, they might as well have uſed it as an Argument to prove he was not there at all. For they have given an Account of him 'till Eleven; but you muſt conſider what Credit is to be given to ſome of their own Witneſſes, that prove he was there; and then you muſt conſider what Weight is to be laid on the Variance of Time, when all lies in the Compaſs of about two Hours. You obſerve too, that they give no Account where he had been when he came from towards *Queen-Street*; for if it be true that he was ill uſed for not pulling off his Hat, how comes he to be coming back again to the ſame Fire? Therefore conſider how far they are to be reconciled; for if there is a Way to reconcile them all, that will be an Inducement to you to believe they all ſpeak right.

Collier ſays, He ſaw him bring the Branch, that it was pretty near the Time of his going away to *Drury-Lane*, and it was not long before the Time that the Women went away, and met him coming back again: So that though it was begun to be rifled at Eight o'Clock, yet by the Evidence of the Women, it appears that the Branch was thrown in between Ten and Eleven; and that is conſiſtent with the Time that he left Mrs. *Giles*. Then if that be ſo, What is there that contradicts it? Nothing but a Computation in Time, and an eaſy Suppoſition ſets that right. If they miſtook but half an Hour, or an Hour, it ſets all right; and it is eaſy in ſuch a Hurry to miſtake it.

Orrel ſays, that *Dammaree* led the Mob towards *Drury-Lane* through *Great Queen-Street*; then, when he had done his Work there, and the Guards had diſperſed them, he comes back again, and the Conſequence is, that thoſe two Women ſhould meet him. This falls in with what the Witneſſes ſay, that he led them towards *Queen-Street* about Eleven, and they ſay, they met him coming from that Way back again, about Eleven; and they don't pretend to give any Account of him that way, though it might have been as eaſy for him to do it, as to give an Account of himſelf in *Lincoln's-Inn-Fields*. And if this Man was only forced to throw up his Hat, and Huzza, and got from them as ſoon as he could, his neareſt Way to *Strand-Bridge* was not by *Great Queen-Street*; and then how comes he to come back again? But if he ſet them on in *Drury-Lane*, it was then very proper for him to come back and viſit his Friends that he had left in *Lincoln's-Inn-Fields*, and ſee how the Work he left them to do went on. Then the Time that the Waterman carried him over is right; that after all was done, he ſhould go home; but it don't appear which way he went, and he might do all theſe Things charged, and yet go home at that Time.

As to his Defence that he was forced, there is only *Wood* and the Man that went to ſee his Apprentice. *Cummins* only ſaw him receive a Blow for not pulling off his Hat; and ſays, He was ſhoved about by the Mob: But it is plain, he was one of them that forced the Soldier to huzza, and pull off his Hat, and there is nothing to contradict that. They take Notice of his being in Drink; it is reaſonable to think it was ſo, but that is not to be any Excuſe at all: I believe a great many of thoſe People might be in drink, and that is a fit Preparation for ſuch Enterprizes as theſe; when Men are going to act ſo contrary to Law, they ought to prepare themſelves for it by Drink, and a little more might carry them to any other Houſes; nay, might carry them to St. *James*'s. If a Man be guilty of a Crime of ſo great Conſequence, it is no Excuſe that he is in drink: It is a Crime that he is in drink; but he was not ſo far diſordered, but he knew what he was about: He could lead them to *Drury-Lane*, tell them that he would have all the Meeting-Houſes down, and uſe proper Words to encourage them: Therefore that Drink, that don't diſable him from doing Miſchief, muſt not be an Excuſe for doing it.

As to his Reputation, I ought to take Notice to you what I think is the Nature of that Sort of Evidence, and the proper Weight that is to be given to it. When a Man is accuſed of any Crime that is wicked or diſhoneſt, and it is not fully proved upon him, but it is in doubt; then his Reputation is of great Moment, becauſe it is not to be thought that a Man of a good Reputation would be guilty of ſuch a Crime as carries Slander with it. But you will conſider, in the firſt Place, that *that* is not to prevail againſt poſitive Evidence, if you believe the Witneſſes: If ſo, a Man muſt always eſcape the firſt Crime he is guilty of. But there is another unfortunate Circumſtance I muſt obſerve, that we are in a Time when many People were led into a Belief, that doing theſe Actions was a commendable Thing; that it was a ſhewing their Zeal to the Queen and the Church; and I doubt not, but many of them that were concerned in this Matter were poor miſtaken Men that thought they were doing their Duty, and what did well become them. And if that be the Caſe, then his Reputation and good Behaviour before is of no Conſideration.

It is unhappy, indeed, that theſe Miſtakes are propagated; but it is monſtrous to ſee how People may be miſled; that they ſhould fall foul on the Diſſenters, and pull down the Meeting-Houſes, when they are rather the Objects of Pity than Anger. If they are not ſatisfied with the Eſtabliſhed Church, which is the beſt in the World, and they loſe the Benefit and Advantage of that excellent Conſtitution, they are to be pitied for their Miſtake: But why ſhould any one be angry, becauſe they do a Prejudice to themſelves? But this Matter having been under the Conſideration of the Legiſlature, and there being a Law that allows them the Liberty of ſerving God in their own Way; ſince that Liberty is allowed them, Why ſhould any body be concerned that they enjoy it? And why ſhould their Meeting-Houſes be pulled down? But Dr. *Sacheverel* at that Time (I would not reflect on him; he has undergone a Cenſure in another Place) when he had fallen foul on the Toleration, and repreſented it as an Encouragement to *Schiſm*, and a Ground of Danger to the Church, thoſe People that thought him a Confeſſor for the Church, thought they could do no leſs than pull down thoſe Meeting-Houſes, which were the Seminaries of *Schiſm*. And this Doctrine of Non-Reſiſtance, which is cried

up in all Cáſes to be the Doctrine of the Church, this Doctrine is to be propagated by Reſiſtance; theſe People will reſiſt, to ſhew they are not for reſiſting, and oppoſe the Queen's Guards in Vindication of that Doctrine that Nobody ought to reſiſt: But it ſhews that when a Madneſs is got among the People, they cannot think as they ought to do, and many unaccountable Things wi l be done; and therefore he might think it no Blemiſh to his Reputation: And Dr. *Sacheverel*, that has been condemned for thoſe Things by the Parliament, and ſtands convicted of being guilty of them, ſome People having made it honourable to him, others thought it might be an Honour to them too, to demoliſh Meeting-Houſes, and to raiſe Seditions and Riots, which are not to be borne in a civilized Country; for Nobody knows where Popular Tumults will end.

This being then the Matter of Fact on both Sides, and what there is in Fact, and in Preſumption; give me leave to take Notice what the Law is in this Caſe. For it has been inſiſted on by the Counſel for the Priſoner (and I muſt do them Right, they have taken into Conſideration all the Caſes that relate to this Matter)---They inſiſt that this is not levying War; and on this Ground, that he was not proved to be at the Meeting-Houſe in *Drury Lane*, but only at the Fire at Dr. *Burgeſs*'s; and if he was only at one Place, one Inſtance would not make it levying War. If, ſay they, there had been a general Intention, it would have gone hard with him; there was an Intention the Night before, and Mr. *Burgeſs*'s was only mentioned; and it is not certain that there was a general Deſign to pull down the reſt. Nay, he was not there, and it was by accident that he came to *Lincoln's-Inn-Fields*, and he was but at that one Place; and they take Notice of ſome Caſes, eſpecially that about the Bawdy-Houſes, and that the Lord-Chief-Juſtice *Hale* differed from the reſt of the Judges.

This is a Matter that has been often under Conſideration: The Act of the 25th *Edward* the Third, which is the great Law for Declarations of Treaſon, declares what ſhall be adjudged Treaſon: Compaſſing or Imagining the Death of the King, and levying War againſt the King, are two diſtinct Species of Treaſon. Now they ſay, that nothing was deſigned againſt the Queen. If the levying War againſt the Queen, was there meant only of a War againſt the Queen's Perſon, it would have been idle to mention it in that Act, becauſe they had before made the compaſſing her Death to be Treaſon.

Now he that levies War, does more than compaſs and imagine the King's Death; therefore it has been always ruled, that where there is an actual levying of War, which concerns the Perſon of the King, they lay the Treaſon to be the compaſſing the Death of the King, and give a Proof of it by levying War. But there is another levying of War, which is not immediately againſt the Perſon of the King, but only between ſome particular Perſons. There is a vaſt Difference between a Man's going to remove an Annoyance to himſelf, and going to remove a publick Nuiſance, as the Caſe of the Bawdy-Houſes; and the general Intention to pull them down all is the Treaſon: For if thoſe that were concerned for them would defend them, and the others would pull them down, there would be a War immediately.

In the Caſe of Incloſures, where the People of a Town have had Part of their Common incloſed, though they have come with a great Force to throw down that Incloſure, yet that is not levying of War; but if any will go to pull down all Incloſures, and make it a general Thing to reform that which they think a Nuiſance, that neceſſarily makes a War between all the Lords and the Tenants. A Bawdy-Houſe is a Nuiſance, and may be puniſhed as ſuch; and if it be a particular Prejudice to any one, if he himſelf ſhould go in an unlawful Manner to redreſs that Prejudice, it might be only a Riot; but if he will ſet up to pull them all down in general, he has taken the Queen's Right out of her Hand: He has made it a general Thing, and when they are once up, they may call every Man's Houſe a Bawdy-Houſe; and this is a general Thing, it affects the whole Nation.

Now to come to this Inſtance. If you believe the Evidence, *Dammaree* was concerned in pulling down two Meeting-Houſes: He was not preſent at *Drury-Lane*, that is, he was not proved to be there: but if he ſet others on to do it, it is his doing, and he as much pulled down that Meeting-Houſe in *Drury-Lane*, as if he had pulled it down with his own Hands. Beſides, they tell you his Declaration, that he would have all of them down. Again, theſe Gentlemen don't ſeem to deny, but if the Intention were general, it would be levying War: If it were general, where would it end? And it is taking on them the Royal Authority; nay, more, for the Queen can't pull them down till the Law is altered: therefore he has here taken on him not only the Royal Authority, but a Power that no Perſon in *England* has. It concerns all that are againſt the Meeting-Houſes on one Side, and all that are for them on the other, and therefore is levying War.

They ſaid, they would deſire this Point to be reſerved to them on the Account of the Opinion of the Lord-Chief-Juſtice *Hale:* But I believe this Matter has been ſo often ſettled, that it would be ſtrange for us to depart from ſuch a ſettled Rule of Law; for theſe are only the ſame Arguments that were offered by the Lord-Chief-Juſtice, and he offered the ſame Arguments that were uſed in Queen *Elizabeth*'s Reign; but it was then held to be Treaſon, and has been held ſo ever ſince. His Objection made them conſider it then, and they did ſo; and I ſuppoſe they will not expect that it ſhould have more Weight out of their Mouths than out of his. It was then ſettled, and has been taken for Law at all Times ſince, ſo that it is not a Matter now to be called in Queſtion. And as to the Statute of 13 *Eliz.* the Intention to levy War ſurely is not an Intention to do a Thing, which when it is done, is not levying War.

Thus the Matter ſtands in Point of Law: I take it to be clear that it is levying War, if you take him to be Guilty of being at one of the Meeting-Places, and leading them, and tempting them to another. Whether that is true, or not, is what muſt be left to your Conſideration. You have heard what has been ſaid, and what Difficulties ariſe in Point of Time, and on the other Proofs: If you are of Opinion, that he was preſent at *Lincoln's-Inn-Fields*, and did encourage them, and acted any otherwiſe than by Force; if you believe he led, or invited them to another Place, and pulled down that, then you will find him Guilty of High Treaſon. If you think he was not there, or was under a Compulſion, then he will not be Guilty. As for his being drunk, whether he was ſo or not, ought not to influence one Way or other.

Cler. of Arr. Officer, take Care of the Jury. Lay your Hand upon the Book. *(Which he did.)*

You ſhall well and truly keep every one ſworn of this Inqueſt together in ſome private and convenient Room, without Meat, Drink, Candle, or Lodging. You ſhall not ſuffer any Perſon whatſoever to ſpeak to them, or any of them, neither ſhall you yourſelf ſpeak to them, until ſuch Time as they have delivered up their Verdict, unleſs it be to aſk them, whether they be agreed of their Verdict? So help you God.

Then the Priſoner was taken away, and the Jury withdrew to the Room provided for them, and after about an Hour's Conſultation, agreed upon a Verdict; and coming into Court, were called over.

Cler. of Arr. Gentlemen of the Jury, anſwer to your Names. Sir *Edward Gould.*

Sir *Edward Gould.* Here. *(And ſo of the reſt.)*

Cler. of Arr. John Collis.---John Collis. Here.

Cler. of Arr. Gentlemen, Are you agreed of your Verdict?

Omnes. Yes.

Cler. of Arr. Who ſhall ſay for you?---*Omnes.* Our Foreman.

Cler. of Arr. Set *Daniel Dammaree* to the Bar.

(Which was done.)

Cler. of Arr. Daniel Dammaree, hold up thy Hand.

(Which he did.)

Gentlemen of the Jury, look upon the Priſoner. How ſay you, Is he Guilty of the High Treaſon, whereof he ſtands indicted, or Not Guilty?

Foreman. Guilty.

Cler. of Newgate. Look to him, Keeper. Guilty of High-Treaſon.

Cler. of Arr. What Goods or Chattels, Lands or Tenements had he at the Time of the High-Treaſon committed, or at any Time ſince?

Foreman. None, to our Knowledge.

Cl. of Arr. Then hearken to your Verdict, as the Court has recorded it. You ſay that *Daniel Dammaree* is Guilty of the High-Treaſon whereof he ſtands indicted, and that he had no Goods or Chattels, Lands or Tenements, at the Time of the High-Treaſon committed, or at any Time ſince, to your Knowledge: And ſo you ſay all.

Omnes. Yes.

Cler. of Arr. Gentlemen of the Jury, the Court diſcharges you, and thanks you for your Service. Cryer, make Proclamation.

Cryer. O Yes, O Yes, O Yes. All Manner of Perſons, that have any Thing more to do at this General Seſſions of the Peace, Seſſions of Oyer and Terminer, and Gaol-Delivery of *Newgate*, holden for the City of *London*, Seſſions of Oyer and Terminer, and Gaol-Delivery of *Newgate*, holden for the County of *Middleſex*, may depart hence for this Time, and give their Attendance here again To-morrow Morning at Eight of the Clock.

GOD ſave the QUEEN.

On Saturday *the 21ſt of* April, 1710, *being the laſt Day of the Seſſions, the Lord Mayor, and Mr. Serjeant* Richardſon, *who acted as Deputy-Recorder, in the Abſence of Sir* Peter King, *Knt. Recorder of the City of* London, *with ſeveral Aldermen, and Juſtices of the Peace for the County of* Middleſex, *came into Court about Six in the Evening; and the Court being reſumed, the Priſoner, together with* Sampſon Archer, *convicted the ſame Seſſions, for ſtealing a Horſe, was brought to the Bar, to receive Judgment: When the Court proceeded thus:*

Cler. of Arr. Daniel Dammaree, hold up thy Hand.

(Which he did.)

You have been indicted for High-Treaſon, in levying open War within this Kingdom, againſt Her Majeſty; you have pleaded Not Guilty, and have put yourſelf for Trial upon your Country, which Country have found you Guilty: What can you ſay for yourſelf, why the Court ſhould not pronounce Judgment againſt you, to die according to Law?

Dammaree. My Lord, I aſk Pardon of the Queen and the Law, which I confeſs myſelf to have offended in a very vile and unjuſtifiable Manner, and humbly beg that my Caſe may be favourably repreſented to Her Majeſty; having no other Dependance, but on Her Royal Mercy.

Mr. Serj. *Richardſon.* Have you any Thing to offer by yourſelf, or Counſel, which may be of ſervice to you in Arreſt of Judgment?

Dammaree. No, my Lord.

Mr. Serj. *Richardſon.* Then call upon the other Priſoner.

Cler. of Arr. Sampſon Archer, hold up thy Hand.

(Which he did.)

You have been indicted for feloniouſly ſtealing a bay Gelding, the Property of *William Birch:* You have pleaded Not Guilty, and put yourſelf for Trial upon your Country, which Country hath found you Guilty: What can you ſay for yourſelf, why the Court ſhould not proceed to give Judgment againſt you, to die according to Law?

Archer. It is my firſt Fact, and I pray that I may be tranſported.

Mr. Serj. *Richardſon.* Is that all you have to ſay?

Arch. Yes, my Lord.

Cler. of Arr. Then, Cryer, make proclamation.

Cryer. O Yes. All Manner of Perſons are commanded to keep Silence while Judgment is giving, upon Pain of Impriſonment.

Mr. Serj. *Richardſon.* You that are the Priſoners at the Bar, you have paſſed your Trials for capital Offences, of which you have been ſeverally indicted: You have had patient Hearings: One of you has had the Aſſiſtance of Counſel of great Skill and Ability, and all the Liberty and Indulgence you could, in Reaſon, deſire or wiſh for; but your Guilt was ſo plain and evident, that every one that heard your Trials muſt admit, that you ſtand juſtly convicted by the Verdict of your Country. Your Crimes, as they are various in their Natures, ſo they ſubject you to different Puniſhments; but your Sentences have this fatal Similitude, that they both terminate in Death: Which, though terrible in its Nature,

ture, muſt of abſolute neceſſity be inflicted by the Civil Magiſtrate, where the publick Peace is rebelliouſly broke, or private Property notoriouſly invaded. Without theſe penal Sanctions, it is impoſſible that Order and good Government ſhould ſubſiſt in any Nation; and how movingly ſoever your preſent melancholy Situation may plead for Pity and Compaſſion, yet the good of the Whole, and the Protection of the Innocent, are Conſiderations of much higher Importance: And you have the leſs to offer for yourſelves, ſince the Nature of the Crimes you have committed is ſuch, as that they muſt be the Effects of very vicious Principles, or extravagant Paſſions: One of you hath offer'd Violence to a Body of People, whom the Law has thought fit to tolerate: and your manner of proceeding was attended with ſuch deſperate Circumſtances of Terror and Miſchievouſneſs, as threaten'd Deſtruction and Deſolation to an innocent Neighbourhood, when to your own malicious Actions you added the Fury of an Element more cruel and mercileſs than yourſelf. You have indeed endeavour'd to excuſe yourſelf by pleading, that your Crime was the Effect of Drinking, which is a much weaker Defence than your Fellow Priſoner makes, who ſays, he robb'd out of Neceſſity. Neither of theſe Caſes will juſtify a Breach of the Law in the leaſt degree, much leſs will it excuſe High-Treaſon, or Felony. The neceſſitous Perſon, indeed, has a fairer Claim to Pity than the Drunkard; for the latter voluntarily weakens his Reaſon, and inflames his Paſſions, and by that very Action is guilty of an Offence againſt common Decency, and the Laws of the Land; while it is poſſible the Misfortunes of the other may be unavoidable, though they are too often the Conſequences of Idleneſs, Extravagance, and Debauchery. We live in a Trading Country, and, I believe, there are few Inſtances where a Man in Health, and of an honeſt Character, may not earn the Bread of Induſtry, and eat it in Security. It was for this Purpoſe, for the Security of the Innocent, that the very Laws were made by which you are now to ſuffer: And as theſe Laws are founded upon an higher Inſtitution, even the Laws of God, you will do well to conſider yourſelves as Offenders againſt the Laws of your Maker, and accountable not only for theſe Crimes, but for every Action of your Lives, at a higher Tribunal, at which you are likely to appear in a ſhort time, perhaps in a few Days. Upon theſe Conſiderations, the Lenity of our Conſtitution gives a ſhort Reſpite to Perſons in your deplorable Circumſtances; and this City provides a Clergyman, whoſe Profeſſion and Experience enable him to adviſe and aſſiſt you in making a proper Preparation againſt your approaching Change; to which important Preparation I ſhall diſmiſs you, having firſt diſcharged the Court of the Duty incumbent upon it, by pronouncing the ſeveral Sentences the Law has appointed.

You *Daniel Dammaree*, having been convicted of High-Treaſon, the Judgment of the Law is, and the Court doth award:

> That you be carried from hence to the Place from whence you came, and from thence be drawn upon a Hurdle to the Place of Execution, where you ſhall be hang'd by the Neck 'till you are almoſt dead, and being alive, you ſhall be cut down, your privy Members ſhall be cut off, and your Bowels taken out, and burnt before your Face: That your Head be ſever'd from your Body, and your Body divided into four Quarters, to be diſpos'd as the Queen ſhall appoint. And the Lord have Mercy upon your Soul.

And you *Sampſon Archer*, having been convicted of Felony, with the Benefit of Clergy; the Judgment of the Law upon you is, and it is awarded by the Court:

> That you return from hence to the Place from whence you came, and that from thence you be convey'd to the Place of Execution; where you are to be hang'd by the Neck 'till you are dead; and the Lord have Mercy on your Soul.

Dammaree. My Lord, I deſire my Wife and Children may have Liberty to come and ſee me in Priſon, in the Abſence of the Keeper.

Mr. Serj. *Richardſon.* As for ſeeing your Wife and Children, that we don't deny you; but we can't allow them to be alone with you, becauſe it may occaſion an Eſcape.

Dammaree. My Lord, if any other Miniſter will be ſo kind as to viſit me in my Diſtreſs, I hope it will be permitted.

Mr. Serj. *Richardſon.* Ay, by all means. 'Tis a Liberty that, I think, was never refuſed. You ſhall have all the Favour that is uſually ſhewn to Perſons in your Condition.

Then the Priſoner was taken away, and the Court proceeded to the other Buſineſs of the Seſſions; and afterwards adjourn'd to *Wedneſday* the 25th of *May* following.

Upon the Report of the Priſoners Caſes to the Queen, they both were reprieved; and ſome time after Dammaree *received Her moſt gracious Pardon.*

LVII. *The Trial of* Francis Willis, *a Footman, for High Treaſon, in levying open War againſt* Her Majeſty, *in the Kingdom, under Pretence of pulling down* Meeting Houſes. 9 Annæ, 1710.

[*At the* Seſſions-Houſe *in the* Old-Bailey.]

Domina Regina verſus Willis.

Die Veneris Viceſimo die Aprilis Anno Domini & Reginæ prædicto.

THE Court being reſumed, as in the Trial of *Dammaree*, and the ſame Judges being preſent,

Cler. of Arr. Middleſex Cryer, make Proclamation.

Cryer. O Yes, O Yes; You good Men of the County of *Middleſex*, ſummon'd to appear here this Day, to try between our Sovereign Lady the Queen, and the Priſoners that ſhall be at the Bar, anſwer to your Names as you ſhall be call'd, every Man at the firſt Call, upon Pain and Peril ſhall fall thereon.

Then the Jury that were return'd on the Pannel, were all call'd over, and the Appearances of all thoſe that anſwer'd to the Call, were recorded.

Cler. of Arr. Set *Francis Willis* to the Bar.

(Which was done).

Cler. of Arr. Francis Willis, hold up thy Hand.

(which he did).

Cler. of Arr. You the Priſoner at the Bar, theſe good Men, whom you ſhall hear call'd, and do now perſonally appear, are to paſs between our Sovereign Lady the Queen and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to ſpeak to them as they come to the Book to be Sworn, and before they be Sworn.

Willis. My Lord, I deſire that none of the Gentlemen that ſerved upon the Jury Yeſterday, may be ſworn now.

L. C. J. You have a Right to challenge Five-and-Thirty peremptorily, without ſhewing Cauſe; and as many more as you can ſhew good Cauſe againſt. If any of the Jury that ſerved Yeſterday appear now, it will be a proper time to take the Exception.

Mr. *Darnell.* My Lord, I take it, the Priſoner's Intent by this Motion, is to ſave the Time of the Court. He does not intend to make any Challenges, but to the Jury of Yeſterday, whom he conceives, in ſome meaſure, to have declared their Opinions upon the Fact already; and therefore deſires the Clerk may paſs over their Names as they ſtand upon the Pannel.

L. C. J. Let it be ſo.

Cler of Arr. Thomas Nicholls, Eſq.

(Who appear'd).

Cler. of Arr. Hold Mr. *Nicholls* the Book.

You ſhall well and truly Try, and true Deliverance make between our Sovereign Lady the Queen, and the Priſoner at the Bar whom you ſhall have in Charge, and a true Verdict give according to your Evidence. So help you God.

Cler. of Arr. Joſeph Spencer.

(He appear'd, and was Sworn).

In like manner the other Ten Gentlemen appear'd, and were ſworn, whoſe Names follow:

JURY.

Thomas Nicholls, Eſq.	*William Breakſpear*,
Joſeph Spencer,	*Charles Gardner*,
John Parſons,	*Richard Hazzard*,
William Hargrave,	*Samuel Brown*,
John Mills,	*Francis Higgins*,
Thomas Phillips,	*Daniel Browne.*

Cler. of Arr. Cryer, count theſe.

Thomas Nicholls.

Cryer. One, *and ſo of the reſt.*

Cler. of Arr. Daniel Browne.

Cryer. Twelve good Men and true, ſtand together, and hear your Evidence.

Are you all Sworn, Gentlemen?

Cler. of Arr. Cryer, make Proclamation.

Cryer. O Yes! If any one can inform my Lords the Queen's Juſtices, the Queen's Serjeant, the Queen's Attorney-General, or this Inqueſt now to be taken, of the High Treaſon of which the Priſoner at the Bar ſtands indicted, let them come forth, and they ſhall be heard, for now the Priſoner ſtands at the Bar upon his Deliverance; and all others that are bound by Recognizance, to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or elſe they forfeit their Recognizance. And all Jurymen of *Middleſex* that have appear'd and are not ſworn, may depart the Court for this Time, and give their Attendance here again To-morrow Morning.

Cler. of Arr. Francis Willis, hold up thy Hand.

(Which he did).

Gentlemen of the Jury, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *Francis Willis*, late of the Pariſh of St. *Andrew, Holborn*, in the County of *Middleſex*, Labourer, *for that he not having the Fear of God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil*, &c. (prout *in the Indictment*, mutatis mutandis), *againſt the Peace of our Sovereign Lady the Queen*, her

her Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided. Upon this Indictment he has been arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himſelf upon God and his Country, which Country you are. Your Charge is to enquire, whether he be Guilty of the High-Treaſon whereof he ſtands indicted, in Manner and Form as he ſtands indicted, or Not Guilty. If you find him Guilty, you are to enquire what Goods and Chattels, Lands and Tenements, he had at the Time of the High-Treaſon committed, or at any time ſithence. If you find him Not Guilty, you are to enquire whether he fled for it: If you find that he fled for it, you are to enquire of his Goods and Chattels, Lands and Tenements, as if you had found him Guilty. If you find him Not Guilty, nor that he fled for it, you are to ſay ſo, and no more, and hear your Evidence.

Mr. *Thomſon.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, *Francis Willis*, the Priſoner at the Bar, ſtands indicted, for that he, not having the Fear of God before his Eyes, but being moved by the Inſtigation of the Devil, and deſigning to withdraw the cordial Love and natural Obedience, which true and faithful Subjects of our Sovereign Lady the Queen do and ought to bear towards her, and intending to diſturb the Peace and common Tranquillity of this Kingdom, on the firſt of *March* laſt, in the Pariſh of St. *Andrew*, *Holborn*, in the County of *Middleſex*, traitorouſly compaſſed and imagined to levy War, and ſtir up Rebellion and Inſurrection againſt our ſaid Lady the Queen within this Kingdom: And that he might accomplish his ſaid traitorous Imaginations and Deſigns, on the ſaid firſt of *March*, and in the ſaid Pariſh being aſſembled, with a Multitude and great Number of People, armed and arrayed in a warlike Manner, he did then and there unlawfully and traitorouſly levy War againſt our ſaid Lady the Queen, contrary to the Duty of his Allegiance, againſt the Peace of our ſaid Lady the Queen, her Crown and Dignity.

To this Indictment he has pleaded Not Guilty.

Gentlemen, we ſhall call the Evidence for the Queen, and if they prove the Charge, as laid in the Indictment, we doubt not but you will find him Guilty.

Mr. Att. Gen. My Lord, the Priſoner at the Bar ſtands charged by this Indictment for being one of thoſe wicked rebellious Perſons, that had ſo little Concern for her Majeſty, and his Fellow-ſubjects, that upon the firſt Day of *March* laſt, he aſſembled with a great Number of other ſeditious and rebellious Perſons, to the Diſturbance of the Peace of the Queen, and her Subjects. It is ſurpriſing to conſider, that under the Reign of a Prince, ſo good as her Majeſty, any ſhould be found ſo wicked as to be liable to be charged with ſuch a Crime as this: When the Courts are open and free, to puniſh any that offend againſt the Laws of the Land, that it ſhould be thought neceſſary for ſuch a Number of People to get together, to do what is the Duty of the Magiſtrate, and for them to take upon them to puniſh Offenders: But we know there are ſome that would bring all Things into Confuſion, and the Way to do it, is to proceed in this Manner. It is not difficult, indeed, to know what the Deſigns of theſe People were; you will hear it was pretended to be a Deſign to pull down the Meeting-Houſes, that is, the Houſes of thoſe People that are unhappy enough to diſſent from the Church. We ſhall ſhew that this was a Deſign formed before, and reſolved to be executed the firſt of *March*: That it was reſolved by a great Number of People met at the *Temple*, that the Night following they would deſtroy the Meeting-Houſes thereabout: That in Execution of this Deſign, there were, in ſeveral Parts of this County, great Numbers got together, and that they did make Aſſaults on divers of her Majeſty's Subjects, and did pull down many Meeting-Houſes, gut them, as they call it, and bring the Materials to their Fires, and there deſtroy them. We ſhall ſhew that this Man was not only at one, but at ſeveral of theſe Bonfires; that he was there not as a Spectator, but active, and had the Vanity to be a Captain of the Mob; that he had got a Curtain belonging to the Meeting-Houſe in *Fetter-Lane*, that he put it upon a Pole, and carried it at the Head of the Mob; that he came from that Place to another Fire in *Hatton-Garden*, and was active in throwing the Timber into the Fire there. When we have proved this Fact upon him, that he was concerned in this Manner, your Lordſhip will direct the Gentlemen of the Jury, that this meeting together with Force, to work a Reformation in the State, in order to pull down the Meeting-Houſes, that this will amount to levying War, and High-Treaſon, as it is laid in the Indictment.

Mr. Sol. Gen. My Lord, the Charge in the Indictment has been fully opened, I ſhall only call the Witneſſes; and if we prove the Fact, I take it to be clear, that it is levying War within the Statute of the 25th of *Edward* the Third.

Then Thomas Tolboy *was ſworn.*

Mr. Sol. Gen. Pray acquaint my Lord, and the Jury, what you know of any Deſign to pull down the Meeting-Houſes.

T. Tolboy. My Lord, as I went through the *Temple*, on *Tueſday* the 28th of *February*, I ſaw there a great Mob, a great many Thouſands, and I heard them conſult of demoliſhing Mr. *Burgeſs*'s Meeting-Houſe.

Mr. Sol. Gen. What was the Occaſion of their being at the *Temple?*

T. Tolboy. They came with Dr. *Sacheverel*'s Coach home from *Weſtminſter.*

Mr. Sol. Gen. When was this to be done?

T. Tolboy. It was to be done the next Night.

Mr. Sol. Gen. You heard this Diſcourſe among them; was Mr. *Burgeſs*'s Meeting-Houſe pulled down the next Night?—*T. Tolboy.* Yes.

Mr. Sol. Gen. Were there any others pulled down?

T. Tolboy. I have been informed ſo; but I don't know myſelf.

Mr. *Darnell.* Was the Talk particularly about Mr. *Burgeſs*'s, or were any others mentioned?

T. Tolboy. Mr. *Burgeſs*'s was mentioned; I don't remember any other mentioned.

L. C. J. You ſay no other was named. Was there any Diſcourſe of Meeting-Houſes in general?

T. Tolboy. I don't remember any but his mentioned. Some ſaid, We will go preſently, and pull down Dr. *Burgeſs*'s Meeting-Houſe; others were for deferring it 'till the Morrow Night; and others, 'till the Event of the Doctor's Trial.

Then John Lunt *was ſworn.*

Mr. Att. Gen. Look upon the Priſoner, and tell us if you know him.

J. Lunt. My Lord, I ſtood within my own Door in *Kirby-Street*, that Night that the Mob was, and about eleven at Night, he came over-againſt my Door, and ſpoke theſe Words, *They made me Captain of a Party To-night.*

Mr. Darnell. My Lord, I muſt object againſt his giving in Evidence what the Priſoner told him.

Mr. Sol. Gen. Surely it is Evidence what a Man ſays.

Mr. Att. Gen. You ſay you know him; do you remember you ſaw him on *Wedneſday*, the firſt of *March* laſt?

J. Lunt. I forgot the Night: It was the Night the Meeting-Houſe was pulled down in *Hatton-Garden.*

Mr. Att. Gen. Did you ſee him alone, or were there others with him?

J. Lunt. He came right againſt my Door, and Nobody ſpoke to him as I ſaw; but he ſaid, *They had made him Captain of a Party that Night.*

Mr. Att. Gen. Stay, we will call another firſt.

Then William Grove *was ſworn.*

Mr. Att. Gen. Pray, acquaint my Lord, and the Jury, whether you ſaw the Priſoner the firſt of *March* laſt.

W. Grove. I never ſaw him 'till that Night. I ſaw him with a long Pole, and a Curtain upon it, and he cried out, A *High-Church* Standard! He ſtopped ſeveral Coaches, and got Money from them, and made them cry, *High-Church.* But to ſwear that this is the Man, I can't.

Mr. Att. Gen. How many were there together?

W. Grove. Five or ſix hundred.

Mr. Att. Gen. Was there any thing like Colours before them?

W. Grove. Yes, there was a Curtain, and he that carried it, cried, *High-Church* Standard! He ſtopped many Coaches, and got Money from them, and made them cry, *High-Church.*

Mr. Sol. Gen. Whence did he bring it?

W. Grove. From Mr. *Bradbury*'s Meeting, in *Fetter-Lane.*

Mr. Sol. Gen. Did he carry it nowhere elſe?

W. Grove. I ſaw it nowhere but at the Fire at *Holborn.*

Mr. Sol. Gen. Was there any Fire in *Hatton-Garden?*

W. Grove. Yes, there were three.

Mr. Sol. Gen. What were they made of?

W. Grove. Of the Materials of Mr. *Taylor*'s Meeting-Houſe.

Mr. Sol. Gen. Do you know of any others that were pulled down?

W. Grove. Yes, Mr. *Burgeſs*'s.

Mr. Sol. Gen. Do you know of any others?

W. Grove. I have heard of others, but don't know them.

Mr. Att. Gen. After *Willis* was taken, you went to *Newgate*; now give an Account, did you make any particular Obſervations at the Time you ſaw the Man diſplay the Banner? Did you take any Notice of him?

W. Grove. Yes.

Mr. Att. Gen. What did you take Notice of him?

W. Grove. I took ſuch Notice, that I thought I ſhould know him again.

Mr. Att. Gen. Now, did you go to *Newgate* to ſee him?

W. Grove. Yes; but the Place was dark, and his Cloaths and Wig were altered.

Mr. Att. Gen. What did you think of the Man you ſaw in *Newgate?*

W. Grove. I did think it was the ſame Man.

Mr. Att. Gen. Now look at him, and ſee whether this is the ſame you ſaw in *Newgate?*

W. Grove. His Cloaths were ſo much altered, that I can't tell.

Mr. Att. Gen. Tell us, is that Man the ſame?

W. Grove. I never ſaw him but that Night, and in *Newgate*; and it was ſo dark, that I can't ſay this is the Man.

Mr. Sol. Gen. Do you remember what Cloaths he had?

W. Grove. I can't tell whether they were Blue or Green.

Mr. Sol. Gen. Were there more that flouriſhed Colours; more than one?

W. Grove. I ſaw but one.

Mr. *Darnell.* Pray, at the Time you ſaw that Banner diſplayed, was there any other Fire in *Hatton-Garden?*

W. Grove. No; I believe this was made firſt; and then the Mob ſaid, They would go to Mr. *Taylor*'s.

Mr. *Darnell.* What time was it that the Fire was in *Holborn?*

W. Grove. About ten.

Mr. *Darnell.* What time was that in *Hatton-Garden?*

W. Grove. About eleven.

Mr. *Darnell.* You ſay this Curtain was brought out of *Fetter-Lane* Meeting. How do you know? Did you ſee it brought out of the Meeting?

W. Grove. No; but I ſaw it brought out of the Lane, and the People ſaid it came from thence.

Mr. *Darnell.* Do you remember what coloured Coat he had on?

W. Grove. I can't tell; it was either Blue or Green.

Mr. *Darnell.* Do you remember what Sort of Hat he had on?

W. Grove. No.

Mr. *Darnell.* Was it a laced Hat, or a plain one?

W. Grove. I cannot tell indeed.

Mr. *Darnell.* You ſay you looked hard at him?

W. Grove. Yes; but I never minded his Hat.

Mr. Sol. Gen. You heard People ſay, the Curtain was taken out of Mr. *Bradbury*'s Meeting: Who were they that ſaid ſo? The People that were concerned in the Fire, or them that ſtood by?

W. Grove. Them that ſtood by, as I might.

L. C. Baron. You ſay you went to *Newgate* ſhortly after this, to ſee this Man?———*W. Grove.* Yes, my Lord.

L. C. Baron. And the Man that you ſaw there, do you believe, or do you not, to be the Priſoner at the Bar?

W. Grove. Yes, I do believe it was.

Mr. *Darnell.* Are you poſitive this is the Man?

W. Grove.

W. Grove. No, I am not.

L. C. J. When you went to *Newgate*, the Man that you saw there, did you believe him to be the Person that you saw displaying the Colours?

W. Grove. Yes, I did.

L. C. J. How long was that after you saw him at the Fire?

W. Grove. About ten Days.

L. C. Baron. Pray, what makes you less knowing, or believing now, than you was then?

W. Grove. My Lord, his Cloaths are altered, and he has another Wig on.

Mr. *Darnell.* Pray tell us any one thing you had, to know this Man by?

W. Grove. No other Instance, but that he flourished the Colours.

Mr. *Darnell.* Do you know the Colour of his Coat?

W. Grove. I believe it was blue.

Mr. *Darnell.* Are you sure it was not green?

W. Grove. I am not sure.

Mr. *Darnell.* When you saw him in *Newgate*, what did you know him by?

W. Grove. By his Features, I thought he was the same Man.

Mr. Darnell. Pray describe any one Feature you knew him by.

L. C. J. It is difficult to describe a Man's Face, and so it is to describe his Hand. If you were asked how you knew a Man's Hand? it would be difficult for you to describe it; and so if you were asked, how you know any Man's Face in Court, unless there was something very particular in his Face; and yet there is something in the Composition of a Face, by which it is known, which none perhaps but a Painter can describe.

Mr. Sol. Gen. You say he is altered from what he was in *Newgate?* Has he not the same Cloaths on?

W. Grove. He has quite another Dress, and another Wig, he had blue Cloaths on there.

Mr. Sol. Gen. And you say, you believe the Man that had the Colours had blue Cloaths?

W. Grove. Yes, indeed I take them to be blue; but cannot be positive whether they were blue, or green.

Mr. Sol. Gen. You have spoken about this Matter already, on your Examination, you have formerly considered it coolly, you ought to consider what you have said before, and to recollect yourself. The Man you saw in *Newgate*, What Coat had he on?---*W. Grove.* He had blue.

Mr. Sol. Gen. I ask you, whether the Man that flourished the Colours had blue?

W. Grove. It was blue or green.

Mr. Sol. Gen. Which of the Two do you believe it to be?

W. Grove. Indeed I can't well tell.

Mr. Sol. Gen. The Man in *Newgate*, What kind of Wig had he?

W. Grove. A Wig that fell more off from his Face.

Mr. Sol. Gen. What sort of Wig had the Man with the Colours? Was it that kind of Wig which the Man had in *Newgate?*

W. Grove. I think it was not.

Mr. Sol. Gen. Do you believe this Man to be him that you saw in *Newgate?*

W. Grove. Indeed I can't believe him to be the same.

Mr. Sol. Gen. Pray who brought that Man to you?

W. Grove. It was Mr. *Hill*, the Keeper.

Mr. Sol. Gen. Is he here? Let him be called.

Then Mr. Hill *was sworn.*

Mr. Att. Gen. Do you remember Mr. *Grove*'s coming to see the Prisoner in *Newgate?*

Hill. I never saw any body come while I was there.

Mr. Sol. Gen. Do you remember that he came to see any of the Prisoners?

W. Grove. Justice *Blackerby*'s Clerk came with me, and we had a Quartern of Brandy.

Hill. I did not remember him before, but I remember Justice *Blackerby*'s Clerk came, and somebody with him.

Mr. Sol. Gen. Who did you shew him?

Hill. The Prisoner at the Bar.

Mr. Sol. Gen. What Dress was he in then? Do you remember?

Hill. No.

Mr. Sol. Gen. Did you carry him to any other but the Prisoner?

Hill. No; there were others upon the Stairs; but they were Women.

Mr. Sol. Gen. Was there any other Prisoner?---*Hill.* No.

Mr. Sol. Gen. And is this the Man?---*Hill.* Yes.

L. C. J. Do you remember what Cloaths he had when he first came to *Newgate*; or at any time after?

Hill. I don't know any but them he has on; I was not in the Way when he came in.

Mr. *Darnell.* Did you go up with that Man?---*Hill.* Yes.

Mr. *Darnell.* Did you go into the Room where the Prisoner was?

Hill. I went to the Grates.

Mr. Att. Gen. When I asked you at first whether he was at *Newgate*, you could not remember till he refresh'd your Memory with a Quartern of Brandy.

L. C. J. Are you sure you shew'd him the Prisoner at the Bar?

Hill. Yes.

L. C. J. Did you shew him any other?---*Hill.* No.

Mr. *Darnell.* You say you never saw him in any other Cloaths than those he has on?

Hill. No, never; I was not there when he came in.

Then Hugh Victor *was sworn.*

Mr. Sol. Gen. Pray, acquaint my Lord, and the Jury, what you know of the pulling down the Meeting-Houses, and what Concern the Prisoner had in it.

H. Victor. I was by at a Neighbour's Door, near the Meeting-House in *Leather-Lane.*

Mr. Sol. Gen. Where was the Mob then?

H. Victor. They came out of *Holborn* to *Leather-Lane.*

Mr. Sol. Gen. Was the Bonfire in *Holborn* made before that in *Leather-Lane?*———*H. Victor.* Yes.

Mr. Sol. Gen. That Fire in *Holborn*, what was it made of?

H. Victor. I can't tell any thing of that.

Mr. Sol. Gen. When the Mob came into *Fetter-Lane*, what did they do?

H. Victor. I believe I saw one hundred and fifty Men there, and they were as hard at work as they could be, in breaking down the Inside of the Meeting-House.

Mr. Sol. Gen. What did they do with the Materials?

H. Victor. I saw some of them, as I think, on that young Man's Back. When the thing was almost over, I went near Mr. *Lunt*'s Door, and I saw him with some Boards on his Shoulders.

Mr. Att. Gen. Look upon him: Are you sure that is the Man?

H. Victor. Yes.

Mr. Att. Gen. What did he do?

H. Victor. I saw upon his Shoulders some Wood; he carried it to the Fire, and threw it in, and made an Huzza: When he had done, he came up again, and spoke some Words to Mr. *Lunt.*

Mr. Att. Gen. Did that same Man afterwards come up, and speak to Mr. *Lunt?*

H. Victor. Yes; but what he said I can't tell.

Mr. Sol. Gen. Do you know what Cloaths he had on?

H. Victor. I don't know his Cloaths, but I can remember him from a thousand; I saw him throw in the Wood, and after he went from the Fire, I kept my Eye on him 'till he came up to Mr. *Lunt*'s Door, and I ask'd Mr. *Lunt*, if he knew him? He said, Yes, he was Mr. *Miles*'s Man.

Mr. *Darnell.* What did you take Notice of him by?

H. Victor. I know him by his Face, though I never saw him before.

Mr. *Darnell.* What is there remarkable in it?

H. Victor. I observed him as he threw in the Wood, and kept my Eye on him till he came to Mr. *Lunt*'s.

Mr. *Darnell.* What Cloaths had he on?

H. Victor. He was in a Livery, but what sort of a Livery I can't tell.

Mr. *Darnell.* When did you see him again?

H. Victor. The next Night: I knew him when I saw him before the Justice.

Mr. Att. Gen. Are you sure, that the Man you saw that Night, and the next Night, is the same Man?---*H. Victor.* Yes.

Mr. *Darnell.* Was it not dark?

H. Victor. There was the Light of the Fire.

Mr. *Darnell.* Did you see him by no other Light than the Fire?

H. Victor. No.

Mr. *Darnell.* How far was he from it?

H. Victor. As far as to the other side the Way.

Mr. *Darnell.* Were there not a great many People there then?

H. Victor. Not so many as there had been at first; they were drawing away.

Mr. *Darnell.* Which Fire was this at? At *Hatton-Garden*, or *Holborn?*

H. Victor. At *Hatton-Garden.*

Mr. Sol. Gen. You say you saw him at Mr. *Lunt*'s Door, and there you took notice of him; How far was the Fire from this Door?

H. Victor. As far as to the Middle of the Yard.

Then Mr. Lunt *was sworn.*

Mr. Att. Gen. Your House, I think, is near where the Fire was?

Lunt. Yes; within three Doors.

Mr. Att. Gen. What time was the Fire?

Lunt. About Eleven o'Clock.

Mr. Att. Gen. Was there a great Number of People there?---*Lunt.* Yes.

Mr. Att. Gen. What was thrown into the Fire?

Lunt. I can't tell; I did not so much as go out of my Door.

Mr. Att. Gen. Did you see the Prisoner that Night?

Lunt. He came right against my Door: He knew me, for I work'd for his Master. He came against my Door, and spoke two or three Words, but I gave him no Answer.

Mr. Att. Gen. Is this the Man that Mr. *Victor* ask'd you, whether you knew him?

Lunt. And as he spoke those Words to me, Mr. *Victor* ask'd me if I knew him: I said, Yes, he is Mr. *Miles*'s Man. My Boy call'd him by his Name, and said, What, *Frank*, are you among them: And that made Mr. *Victor* ask, If I knew him?

Mr. Sol. Gen. What pass'd between you and him?

Mr. *Darnell.* My Lord, we humbly submit it, that what he has said, cannot be made use of against him; for the Statute of the seventh of King *William* directs, that he shall not have any Evidence given against him relating to his Word; for the Act directs, That after the 25th of *March*, 1696, no Person shall be attainted of High-Treason whereby Corruption of Blood may be made, or of Misprision of such Treason, but by the Oaths and Testimony of two lawful Witnesses, either both to the same Overt-Act, or one to one, and the other to another Overt-Act of the same Treason, unless the Party willingly, in open Court, confess the same, or stand mute, *&c.*

L. C. J. Where do you find in that Act, that what he confesses is not to be given in Evidence?

Mr. *Darnell.* Because that Act provides, That none shall be tried, but upon the Oaths of two Witnesses to an Overt-Act. Unless the Person shall confess in open Court, he shall be tried by the Oaths of Witnesses to an Overt-Act. Now to what he has done they may call Witnesses; but to what he has said, we hope they shall not. Confessions are, in all Cases, a dangerous Evidence, and to be used very cautiously. It has been disputed, and so is the Case in *Anderson*, Whether any Examinations shall be used against them, but those which are before a Magistrate?

Mr. Justice *Tracy.* It was quite otherwise in the Case of Capt. *Smith.* The Question is only, Whether he shall be convicted upon that Proof alone?

L. C. J. If you make any Objection on this Head, it will be proper when they close their Evidence. If there is no other Evidence, you may then make this Objection, Whether he shall be convicted on that Evidence singly. Suppose two Witnesses prove an Overt-Act, and besides them there should be others to prove his Confession, Is not that Act comply'd with, when some prove the Fact, and others come in Confirmation of them? It don't follow but that if there be two Witnesses to Overt-Acts, there may be as many others to prove Confessions: It don't say, that no Evidence shall be given but of Overt-Acts.

L. C. Baron. If a Man confesses before a Magistrate that he is guilty of Treason, and that Confession of his should be proved by two Witnesses,

neſſes, it may be diſputed, whether he ſhall be convicted on that Evidence, becauſe it is ſaid, there muſt be two Witneſſes to an Overt-Act. If they have no other Evidence but his Confeſſion, then will be a proper Time to make your Objection; but 'till then, there is no reaſon to object againſt what is now offer'd.

Mr. *Darnell.* It is expreſsly the Words of the Book, that Examinations before a Magiſtrate ſhall be Evidence, which ſeems to imply the Negative, that others ſhall not be.

Mr. Sol. Gen. The Queſtion was, Whether that Confeſſion was ſufficient to convict? And not, Whether it ſhould be given in Evidence? Let us go on; if our Evidence is not ſufficient, you will take Notice of it.

Mr. Att. Gen. Mr. *Darnell* would ſtop the Witneſs; as if there was ſomething in that Act, or in the Law, that ſhall reſtrain you from hearing what this Man did confeſs of this Fact: No, ſurely, there is nothing that can hinder that Evidence. The Act don't hinder any thing in point of Evidence, when it ſays, you ſhall not convict a Man unleſs there be two Witneſſes to the Fact: It don't ſay you ſhall hear no other Evidence. This indeed was mention'd in the Caſe of Capt. *Smith:* He had the *French* King's Commiſſion, and it was loſt among other Papers: He was ſhewn the Parchment, and own'd it, and that Confeſſion of his, that he had ſuch Commiſſion, was given in Evidence.

Mr. Sol. Gen. According to this Objection, he would exclude all Confeſſions from being Evidence. He oppoſes our examining to the Confeſſion of the Priſoner, before he knows what it was that he did confeſs. Now this Act was never intended to exclude all Evidence to Confeſſions; all that it requires, is to have two Witneſſes to Overt-Acts. The Queſtion is not now, Whether a Confeſſion ſhall be an Evidence of an Overt-Act? But, Whether any Confeſſion whatſoever may be given in Evidence? And ſurely it was agreed in the Caſe of Captain *Smith*, that his Confeſſion, as to the Circumſtances, was Evidence, but not as to the Overt-Act. On the Trial of *Ball**, the Queſtion was, Whether he was an *Engliſhman?* His Confeſſion was Evidence to that Purpoſe, admitting it was not to the Overt-Act. We ſhall not call this Man to prove a Confeſſion of an Overt-Act, but to prove his Confeſſion in general, what was the Occaſion of his being abroad that Night, and that is proper Evidence; for this Tumult muſt be either a Riot, or levying War, according to the Intention of thoſe that got together: What ſhall explain that Intention, but the Confeſſion and Declaration of the People that were got together? So that we hope we are proper to examine to this Point.

Mr. *Darnell.* I remember the Caſe of Captain *Smith:* I remember they brought ſome that knew the Hand of the Admiral of *France*, to prove, that they ſaw his Hand to the Commiſſion; but his Confeſſion was not admitted as Evidence.

Mr. Juſtice *Tracy.* I never knew it diſputed, but a Man's Confeſſion might be given in Evidence.

Mr. *Darnell.* The Act ſays, he ſhall not be tried, but on the Oaths of two Witneſſes to an Overt-Act, unleſs the Party willingly, in open Court, confeſs the ſame; which ſhews what Confeſſion it is that is to be admitted of.

L. C. J. Then you ſay, no Confeſſion ſhall be given in Evidence: Now, pray, What Words are there in the Act, that ſay no Confeſſion ſhall be given in Evidence?

L. C. Baron. A Confeſſion ſhall not ſupply the want of a Witneſs; there ſhall be two Witneſſes to the Treaſon notwithſtanding: But to ſay it ſhall not be given in Evidence, there is no ground for it.

Mr. Att. Gen. Mr. *Lunt*, pray tell us what was it that paſs'd between you and the Priſoner?

Lunt. All that he ſaid to me, when he came before my Door, was, that they made him Captain of a Party that Night; that he took a Piece of a Window-curtain, and made it a Colours, and we burnt the Clock in *Holborn.*

Mr. Att. Gen. And is this the Man?——*Lunt.* Yes.

Mr. Sol. Gen. Do you remember what Cloaths he had on?

Lunt. I don't remember the Colour.

Mr. Sol. Gen. What is the Livery his Maſter gives?——*Lunt.* A Blue.

Willis. Did I ſay I burnt it, or that the Company burnt it?

Lunt. He ſaid, We burnt.

Mr. Att. Gen. That is, he and the reſt of the Mob.

Mr. *Darnell.* You did not ſee him do any thing?

Lunt. Nothing at all.

Then Robert Cubwidge *was ſworn.*

Mr. Sol. Gen. Do you know Mr. *Grove?*——*Cubwidge.* Yes.

Mr. Sol. Gen. Do you remember you went with him to ſee a Priſoner?

Cubwidge. Yes.

Mr. Sol. Gen. What Priſoner did you ſee there?

Cubwidge. The Priſoner at the Bar.

Mr. Sol. Gen. Did you ſee any other Priſoner but him?

Cubw. No: We ſaw *Dammaree* and *Purchaſe* below, but no other above.

Mr. Sol. Gen. What Cloaths had he on then?

Cubwidge. He had a blue Livery on.

Then William Orrel *was ſworn.*

Mr. Att. Gen. Pray acquaint the Court and the Jury what you know of the Tumult which was the Firſt of *March* laſt, in thoſe Parts where you was.

W. Orrel. I don't know any thing of the Priſoner at the Bar; but when I came to the End of *Fetter-Lane*, there was a Footman in a blue Livery, a clever-ſhaped Man of his Size. I ſaw the Conſtable there, and ſaid to him, Here is a great Riot, I am ſorry you can't put a ſtop to it: Says he, Here is ſuch a Mob, we can't ſuppreſs it: Says he, There is a Footman there, I know him very well; I know whoſe Man he is. I can't tell who he was, but I ſaw a Footman there huzzaing, and bidding them make haſte. I went into the Meeting-Houſe in *Fetter-Lane*, and ſaw the Timber pull'd down, and thrown into the Fire.

Mr. Att. Gen. You was at that *Meeting-Houſe* in *Fetter-Lane*; Was you at any other?

W. Orrel. I was at Mr. *Burgeſs*'s and Mr. *Earl*'s, and at that in *Black-Friers:* I went with the Guards thither.

Mr. Att. Gen. Give an Account of that.

W. Orrel. When I was in *Lincoln's-Inn-Fields*, the Cry was, To the City, to the *Bank*. When I came to the Guards, I ſaid to the Captain, For God's Sake go into the City, for if they go to the *Bank*, we are undone; for there was a Report, that they were gone into the City. I aſked ſeveral Perſons as we went along, Where is the Mob? Are they gone into the City? At laſt I heard they were gone to the Meeting-Houſe in *Black-Friers*, and were pulling it down. I went directly with the Guards up *Fleet-Lane*; I headed them in the *Old-Baily*, and run before, and got the Gates open, and told them, the Queen's Guards were coming: I ſhew'd them the way to the Meeting-Houſe, and there they met the Mob pulling it down.

Mr. Att. Gen. Do you know of any other Meeting-Houſe that was pull'd down? Was you at Mr. *Burgeſs*'s?

W. Orrel. I was in it four times: I ſaw it full of People: I ſaw the Galleries and Pulpit beaten in, and pulled down; and as I ſtood upon a Board, a Fellow was pulling it up, and ſwore, God damn that lazy Fellow, what does he do there?

Mr. Att. Gen. You ſay you was there four times?

W. Orrel. Yes, I was in Mr. *Burgeſs*'s four times, twice in Mr. *Earl*'s, once in Mr. *Bradbury*'s, and at the Door of *Black-Friers.*

L. C. J. What was the Cry there?

W. Orrel. Nothing but in general, Damn them, we will have them all down. I heard Mr. *Dolben*'s Houſe enquired for, but they mentioned my Lord *Wharton*'s, and St. *James's*, often; I believe I heard it call'd out a thouſand times: And when I was at Mr. *Earl*'s in *Drury-Lane*, I call'd out, Where is *Jolly*, the Waterman? becauſe I wanted to know where he was: Some ſaid, He is gone to St. *James*'s; others, to my Lord *Wharton*'s; No, ſaid others, he is gone to the Back-door, to break it open.

Mr. *Darnell.* You ſay you ſaw a Footman at the Fire; pray, What time of Night was it?

W. Orrel. About Ten, or a little after. As I went from *Fetter-Lane*, I went along with them, as they carried the Wood to *Holborn*, (but went at a diſtance on the other ſide the way) I ſaw the Footman at the End of the Alley, as you come out of the Meeting.

Mr. *Darnell.* Was that before the Fire was lighted, or after?

W. Orrel. It was after the Fire was lighted.

Mr. *Darnell.* What was the Footman doing?

W. Orrel. He was hallooing and huzzaing the Mob.

Mr. Att. Gen. My Lord, we have done with our Evidence for the Queen, and ſubmit it to your Lordſhip.

Mr. *Darnell.* My Lord, I am Counſel for the Priſoner, who ſtands accuſed of High-Treaſon, and the Inſtance is in levying War againſt the Queen. To make this out, the Gentlemen of the other Side begun with ſhewing, that there was an Intention to pull down Meeting-Houſes in general, that was open'd: To make that out, the firſt Witneſs, *Tolboy*, ſays, That as he was going through the *Temple*, he heard a great Cry among the Mob, that they would go and pull down Mr. *Burgeſs*'s Meeting-Houſe; it don't appear, that there was any more named. I muſt agree, if the Deſign were to pull them down in general, and he acted in that Deſign, I can make no Queſtion, but it would be High-Treaſon; but if the Deſign was only to pull down Dr. *Burgeſs*'s, it was only a particular Injury to him, he might have his Remedy by an Action for it, and the Government might proſecute him for a Riot, but if that be the Caſe alone, that can't be High-Treaſon: There muſt be a general Intent to pull down Houſes, or Incloſures, and not to pull down any particular Man's Houſe or Incloſure.

After he has given this Account, the other Witneſſes give an Account, That at ſome of the Fires, there was a Diſcourſe of going further, and pulling down all the Meeting-Houſes about the Town; but the original Intent was only to pull down one. If, at that firſt Fire, they ſhould take a new Reſolution to pull down another, that would ſtill be a particular Injury; and ſo if they ſhould carry it never ſo far that way, it would not be High-Treaſon, otherwiſe than as it is an Evidence of a general Intent: But if the Fact were particular, though they took that Reſolution twenty times one after another, yet it would not amount to High-Treaſon. But to bring it home to the Priſoner, to ſhew that he was concern'd in the Deſign, we ſubmit it, that there is not ſuch Evidence as is required to fix it upon him. The firſt Witneſs to that Point is *Grove:* He ſays there was a Man in a Livery, whether blue or green he can't tell: Sometimes he ſaid it was green, ſometimes blue; but being aſk'd, he is not ſure the Priſoner is the Man that he ſaw with a Banner encouraging the Mob. If he can't be certain as to the Man, his Evidence can't be confirm'd by *Lunt*, who only ſpeaks of the Priſoner's Confeſſion; for they ſaid they would not uſe that Confeſſion to fix the Overt-Act: And if it is not ſo, then *Grove*'s Evidence is out of the Caſe. They would endeavour to ſupport it by the Officer of *Newgate*, who carried *Grove* to the Priſoner; he ſays there was no other Man in the Room, and therefore it muſt be the Priſoner who was ſhewed to *Grove*; and then, ſays *Grove*, The Man I ſaw in *Newgate*, I believe to be the ſame I ſaw at the Fire; ſo that it is altogether uncertain, as to *Grove*'s Evidence. Then they call *Victor*; he ſays he ſaw a Footman carry ſome of the Timber, and throw it into the Fire; and that he ſaw the ſame Man talk to *Lunt*; and *Lunt* is to ſupport that Evidence, by ſaying, that the Priſoner came and talk'd to him; but *Lunt* don't pretend that he ſaw the Priſoner do any thing. It is ſcarce to be believed, that *Victor* ſhould take Notice of his Features, ſo as to know him again, eſpecially ſeeing his are not very remarkable, and there was no Light, but the Light of the Fire: And after all, he can't tell you any one Feature that is remarkable, nor did he take Notice of his Cloaths, or any thing remarkable about him. The Deſcription of a Perſon is a conſtant Evidence that you meet with, in Caſe of a Robbery, or the like; you have the Deſcription of the Colour of the Horſe, or the Man's Cloaths, or ſome ſuch thing; but he don't pretend to any one Circumſtance to induce him to believe he is the ſame Man, but only that he is ſatisfied, for Reaſons he keeps to himſelf. Theſe are the only two Perſons they have the leaſt Colour to ſay are Witneſſes to any Overt-Act, and without two he can't be convicted; and theſe are to be ſupported by *Lunt*'s

* Mr. Juſtice *Foſter*, in his Reports, p. 242. ſays, "I think *Vaughan*'s is the Caſe cited in *Willis*'s Trial by the Name of *Ball.*"

Evidence,

Evidence, that the Priſoner told him they had made him a Captain, and that he had made Colours of a Curtain, and that they had burnt the Clock. We think the Act is not ſufficiently proved by two Witneſſes, and therefore can't be ſupported by a Confeſſion, which is but a dangerous Sort of Evidence in all Caſes, and a Man is not to be found Guilty upon a Confeſſion; and for that Reaſon, the Statute takes Care, that there ſhall be two Witneſſes to an Overt-Act: We therefore ſubmit it, that this Evidence is not ſufficient to convict the Priſoner.

But, my Lord, the Priſoner's Caſe, we apprehend, is ſuch, as will, in a great meaſure, excuſe him from any Guilt; and we hope to ſatisfy your Lordſhip and the Jury, that he was not concerned in this Deſign, or in aiding or aſſiſting thoſe that were Actors in it. The Priſoner is a Servant to one Madam *Miles*, who lives in *Grevill-Street*, near *Hatton-Garden*; he has lived there two Years, and has been, all that Time, a diligent Servant, and behaved himſelf well in the Family; and I believe, all the Aſſiſtance he has to enable him to make his Defence, is owing to their Charity, which we think is an Argument of his good Behaviour, that his Maſter and Miſtreſs will interpoſe, and endeavour to bring him off in a Thing of this Kind. It was the Firſt of *March* laſt, when this Inſurrection was all over the Town, and they came to *Holborn*, and with the Materials of a Meeting-Houſe they made a great Fire near this Lady's Houſe: I think, about half an Hour after ten was the firſt Notice that they had at this Houſe that there was a Fire: The Lady of the Houſe was going to Bed, and in her Chamber they ſaw ſo great a Light, that they thought the Fire was near; they called to the Priſoner, and he was going to Bed too; they ordered him to go and learn where the Fire was, for they knew not what Sort of Fire it was: Upon that he went to learn what the Occaſion of it was. There they ſerved him, as upon this Occaſion they did every body, they made them pay Obedience, as they call it, and halloo, and throw up their Hats. It is not to be ſuppoſed it was very readily learnt what the Deſign was, and where they had the Materials: As ſoon as he had informed himſelf, I think we ſhall ſhew, that he got out of the Crowd as faſt as he could, and was going home to acquaint his Lady; that as he was going home, he was told there was another Fire in *Hatton-Garden*; and he thinking he did not purſue his Lady's Inſtructions without learning what this was, accordingly he ſtruck over the Way, and went into *Hatton-Garden*, and there found it was the ſame Deſign, and the Materials of another Meeting-Houſe were brought thither, and burning. As ſoon as he had thus inform'd himſelf, he came to his Lady, and inform'd her, that the Mob was up, that they were pulling down the Meeting-Houſes, and that he had ſeen two Fires. After he had given this Account, they ordered the Doors to be ſhut up, and the Family went to Bed, and after that, he was not out of the Houſe. Now, as to the Buſineſs of the Banner, there is not Evidence to fix it upon him: And if we ſhew, that he went alone from *Holborn*, it muſt be believed, that it was ſome other Footman, in ſome other Livery; for if he was their Captain, and carried the Colours upon a Pole, it was not his Buſineſs, nor would they have ſuffered him to leave them there in *Holborn*, when they were going to make another Fire. It is pretty extraordinary to ſuppoſe where he could get a Pole to carry a Banner of that Kind: But if he was coming home by himſelf, without any Mob with him, ſure it is pretty extraordinary that the Captain of the Mob, ſo conſiderable a Man as he, could go in ſo private a Manner. We will call our Witneſſes, and hope the Evidence will make it plain, that he did nothing but according to the Commands of his Miſtreſs.

Then Mrs. Briſco *was ſworn.*

Mr. *Darnell.* Pray, Madam, acquaint my Lord and the Jury, whether the Priſoner has lived at any time, and how long, with Mrs. *Miles.*

Mrs. *Briſco.* He has lived there two Years next *May.*

Mr. *Darnell.* In all that Time, how has he behaved himſelf?

Mrs. *Briſco.* A very civil, honeſt Fellow.

Mr. *Darnell.* Did you ever know him guilty of drinking, or ſtaying out at Nights?

Mrs. *Briſco.* He has always carried himſelf very civilly.

Mr. *Darnell.* Pray, at the Time of this Diſturbance, Do you know the Occaſion of his going out?

Mrs. *Briſco.* I was in my Mother's Chamber while ſhe was going to Bed, and I ſaw a Fire, and heard a great Noiſe; I called to my Siſter, who was below, and bid her ſend *Frank* to know what the Matter was.

Mr. *Darnell.* Did he go accordingly?

Mrs. *Briſco.* Yes.

Mr. *Darnell.* You ſay you bid her ſend *Frank*; Who do you mean by that?

Mrs. *Briſco.* I mean the Priſoner at the Bar.

Then Mrs. Miles *was ſworn.*

Mr. *Darnell.* Madam, you heard what Mrs. *Briſco* ſaid, that ſhe deſired you to ſend *Frank*, the Priſoner, to ſee what the Matter was: Did you ſend him?

Mrs. *Miles.* My Siſter called to me, and ſaid, ſhe believed there was a Fire in *Holborn*, and bid me ſend him to ſee; which I did.

Mr. *Thomſon.* Pray what time was this?

Mrs. *Miles.* It was paſt Ten; the Clock had ſtruck before my Mother went up.

Mr *Thomſon.* How much after Ten might it be?

Mrs. *Miles.* Indeed I can't tell; but I am ſure it was paſt Ten.

Mr. *Thomſon.* What Time was it before he came back?

Mrs. *Miles.* I believe the Clock had not ſtruck Twelve, to the beſt of my Memory.

Mr. *Darnell.* What Account did he give you when he came back?

Mrs. *Miles.* I did not ſee him that Night.

Mr. *Darnell.* What did he ſay next Day?

Mrs. *Miles.* He ſaid they had burnt the Meetings: I aſked him if he had done any thing? He ſaid, nothing to harm him.

Mr. *Darnell.* Where is Mrs. *Miles*'s Houſe?

Mrs. *Miles.* In *Grevill-Street*; the Back of our Houſe looks into *Furnival's-Inn.*

L. C. J. Had not you the Curioſity to know what Account he brought?

Mrs. *Miles.* I was not below; my Siſter was.

L. C. J. How came you to aſk him, Whether he had done any thing?

Mrs. *Miles.* Becauſe next Day he had Notice given him, that *Lunt* intended to ſwear againſt him: At Supper I ſaw him look very dull; and having heard of this in the Houſe, I aſked him if he had done any thing to occaſion it? He ſaid, No, indeed.

L. C. J. How long was it before he was taken up?

Mrs. *Miles.* It was *Thurſday* Night.

L. C. J. I would aſk Mrs. *Briſco*, Pray what Account did he give you?

Mrs. *Briſco.* I can't be particular as to that; but only that they had burnt the Meeting-Houſes, but he did not ſay that he had help'd to do it.

L. C. J. About what o'Clock was it when he came home?

Mrs. *Briſco.* To the beſt of my Knowledge, the Clock had not ſtruck Twelve.

L. C. J. Was not you impatient at his ſtaying ſo long out?

Mrs. *Briſco.* It was not full two Hours.

L. C. J. Did you not aſk him why he ſtaid ſo long?

Mrs. *Briſco.* I was angry that he ſtaid ſo long: I think he ſaid, he never ſaw a Mob in *London* before; and to my Knowledge he was not in any of the Mobs before.

L. C. J. Did he give no Account what was done there?

Mrs. *Briſco.* I don't remember he did.

L. C. J. Did he give you any Account of the Curtain he carried?

Mrs. *Briſco.* I don't remember any thing, my Lord.

L. C. J. That is a pretty remarkable Thing.

Mrs. *Briſco.* I heard afterwards of a Curtain.

L. C. J. When did you hear of it?

Mrs. *Briſco.* When he was before the Juſtice.

L. C. Baron. Did you ſee any more Fires than one, when you ſent him out?

Mrs. *Briſco.* No, my Lord.

L. C. Baron. Where did you expect the Fire to be?

Mrs. *Briſco.* I thought it was in *Holborn.*

L. C. Baron. Did you hear of any Fire in *Hatton-Garden?*

Mrs. *Briſco.* Yes, afterwards I did.

L. C. Baron. But you did not know of any there when you ſent him out?

Mrs. *Briſco.* No, my Lord.

Then Mary Hodges *was ſworn.*

Mr. *Darnell.* Do you know the Priſoner at the Bar?

Hodges. My Lord, he is my Fellow-Servant.

Mr. *Darnell.* What time of Night was it when your Miſtreſs ſent him out?

Hodges. It was paſt Ten.

Mr. *Darnell.* What was he ſent for?

Hodges. It was to ſee if there was a Fire in *Holborn.*

Mr. *Darnell.* Then the Fire was burning before he went out?

Hodges. Yes, my Lord.

Mr. *Darnell.* How long had it been burning?

Hodges. I cant't tell; my Miſtreſs was going to Bed about Ten, and one of the young Ladies ſaw the Fire, and call'd out to him to go and ſee what it was.

Mr. *Darnell.* Was you there when he came back?

Hodges. I was not there; for I had a Relation that was ill, and my Miſtreſs gave me Leave to go and ſit up with her.

Then Elizabeth Elliot *was ſworn.*

Mr. *Darnell.* Do you know the Priſoner at the Bar?

Elliot. Yes.

Mr. *Darnell.* Do you remember the Night the Fire was in *Holborn?*

Elliot. It was St. *David*'s Day.

Mr. *Darnell.* Was he ſent out that Night?

Elliot. He was ſent to ſee the Fire at *Holborn*; my Lady ſent him to ſee if there was a Fire.

Mr. *Darnell.* Did he go out for that?

Elliot. Yes.

Mr. *Darnell.* Was you there when he came back?

Elliot. Yes; I let him in.

Mr. *Darnell.* When he came back, what did he do? Did he go to Bed?

Elliot. Yes.

Mr. *Darnell.* What Account did he bring of the Fire?

Elliot. I don't know what Account he brought of it.

Mr. Att. Gen. Was you up when he came home?

Elliot. Yes.

Mr. Att. Gen. What o'Clock was it?

Elliot. The Clock had not ſtruck Twelve.

L. C. J. You can't remember, it may be, the whole Account he gave when he came back; but do you remember nothing of it?

Elliot. No.

L. C. J. Not a Word?

Elliot. No.

L. C. J. Was he not aſked how he came to ſtay ſo long?

Elliot. No, not in my Hearing.

L. C. J. Were your young Miſtreſſes going to bed, as well as the old one?

Elliot. No; they ſtaid up 'till he came in.

L. C. J. But were they deſigning to go to Bed before he went out?

Elliot. Yes; we were going to Bed preſently.

L. C. J. Well then, When you had ſtaid up ſo long as Twelve, were there no Queſtions aſked how he came to keep you up ſo long?

Elliot. The Ladies aſked him, what made him ſtay? He ſaid, he never ſaw a Mob before.

L. C. J. But I ſuppoſe he told you what Diverſion he had *had* there?

Elliot. No; I did not hear him ſay any thing of it.

L. C. J. He told you nothing of the Fire, or the Colours?

Elliot. No; nothing.

L. C. J. Did not the Ladies aſk what that Fire was?

Elliot. Not in my Hearing.

Mr. Sol. Gen. It is ſtrange he ſhould be ſent out to enquire after the Fire, and not be aſked any thing about it: Was no Enquiry made of the Errand he was ſent about?

Elliot. Not in my Hearing.

Mr. *Thomſon.* Had you no Diſcourſe with him?

Elliot. No.

Mr. *Thomſon.* Did you talk nothing of it the next Day?

Elliot. No.

Mr. Sol. Gen. Did he give no Account the next Day, or at any Time after, of what paſſed?

Elliot. No, not in my Hearing.

L. C. J. What Cloaths was he in that Night?

Elliot. He was in his Livery.

L. C. J. What is his Livery?

Elliot. It is blue, with black Buttons, and trimmed with black.

Then Mr. Pryor *was ſworn.*

Mr. *Darnell.* Pray acquaint my Lord and the Jury, whether you ſaw the Priſoner at the Bar, any Time at the Fire in *Holborn*, and before that in *Hatton-Garden?*

Pryor. As I was coming down *Holborn*, I had been at *Weſtminſter*; I came to *Leather-Lane* End, and there I light of the Priſoner at the Bar.

Mr. *Darnell.* Where was you going?

Pryor. I was going Home to *Clerkenwell:* I ſaw *Willis* in *Holborn:* He cries out, Who comes there, Mr. *Pryor?*

Mr. *Darnell.* Where was *Willis?*

Pryor. He ſtood at the End of *Leather-Lane*, and he and I walked down together along *Leather-Lane*, to *Grevill-Street:* He told me he lived there with Mrs. *Miles.* I aſked him, Shall we drink a Mug of Beer? With all my Heart, ſays he; but my Lady has ſent me out to ſee what the Matter is: So we walked talking together, as far as *Brooks-Market*; and there were a great many People hallooing for High-Church and *Sacheverel*; ſo we parted there, and did not go in to drink, becauſe there was a great Mob about.

Mr. *Darnell.* You ſay he parted from you to go Home; Was any body with him?

Pryor. No.

Mr. *Darnell.* Was there any Curtain, or Colours, or Stick?

Pryor. No.

Mr. *Darnell.* Was there any body, or any Mob, that claimed him as their Captain?

Pryor. No; I ſaw Nobody ſpeak to him.

Mr. *Darnell.* Did you afterwards ſee the Fire in *Hatton-Garden?*

Pryor. They were juſt going to light it.

Mr. *Darnell.* What were they doing at the Meeting-Houſe in *Leather-Lane?*

Pryor. They were pulling it down, and carrying it to *Hatton-Garden.*

Mr. *Darnell.* Did the Priſoner carry any of it?

Pryor. I did not ſee him carry any.

Mr. Att. Gen. What Time of Night was this?

Pryor. It was Eleven, or thereabouts; I can't tell whether it was over or under.

Mr. Sol. Gen. At which End of *Leather-Lane* did you ſee him?

Pryor. In *Holborn.*

Mr. Sol. Gen. Was not the Way you walked with him, as well the Way to *Hatton-Garden*, as to *Grevill-Street?*

Pryor. It was his Way as well to the one as the other.

Mr. Sol. Gen. Did you leave him ſtanding in the Street, or how did you part?

Pryor. We ſhook Hands, and he ſaid, I muſt go and tell my Lady how it is.

Mr. Sol. Gen. What Time of Night was it?

Pryor. As nigh as I can gueſs, Eleven o'Clock.

Mr. Sol. Gen. Where did you part?

Pryor. Directly over-againſt *Brooks-Market.*

L. C. J. Where did you firſt ſee him?

Pryor. At *Holborn*, at *Leather-Lane* End.

L. C. J. Where was the Fire?

Pryor. Almoſt over-againſt the End of the Lane.

L. C. J. What was he doing?---*Pryor.* Nothing; only ſtood to look on.

L. C. J. Then you went with him up *Leather-Lane?*---*Pryor.* Yes.

L. C. J. Where did you part with him?

Pryor. At *Brooks-Market*; we walked ſo far, and talked of drinking together; but when the Mob were hallooing, and making ſuch a Noiſe, we did not go in to drink.

L. C. J. Where did you talk of going in to drink?

Pryor. He did not name any Place, and I was a Stranger there.

L. C. J. How came you to walk ſo far as *Brooks-Market?*

Pryor. I don't know; we were talking of ſeveral Things in the Country.

L. C. J. How came you to be out ſo late?

Pryor. I had been carrying ſome Glaſs to *Weſtminſter*, and was going Home again.

L. C. Baron. Did he give you any Account of the Fire in *Holborn?*

Pryor. He talked nothing of the Fire.

L. C. Baron. How far was the Fire from the End of the Lane?

Pryor. Juſt at the End of it.

L. C. Baron. Did you ſee any Thing of the Fire?---*Pryor.* I did ſee it.

L. C. Baron. Did he ſay he had been there?

Pryor. No; but he ſaid his Lady ſent him to ſee where it was.

Mr. *Thomſon.* You ſaid he was going Home, and afterwards you ſay you went to *Brooks-Market*; is that between *Fetter-Lane* and *Grevill-Street*, or is it beyond it?---*Pryor.* It is beyond it.

Mr. *Thomſon.* How came he then to go beyond *Grevill-Street*, in order to go Home to his Miſtreſs?

Pryor. We were talking of Country Affairs.

Mr. *Darnell.* We ſhall call a Witneſs to prove, that after *Grove* had been at *Newgate* to ſee the Priſoner, he declared he did not believe him to be the ſame Man.

Then Stephen Fletcher *was ſworn.*

Mr. *Darnell.* Had you any Diſcourſe with *Grove* after he had ſeen the Priſoner in *Newgate?*

Fletcher. When he came from *Newgate* on *Good-Friday* at Night, and had been to ſee the Priſoner, I aſked him what he ſaid to him? Nothing, ſays he; for he was not the Man that carried the Curtain; for the Man that carried the Curtain had a green Coat and braſs Buttons.

Mr. Att. Gen. Are you an Acquaintance of *Grove*'s?

Fletcher. Yes; I live in the ſame Houſe.

Mr. Att. Gen. Was it *Good-Friday* at Night, after he had been at *Newgate*, that he told you this?---*Fletcher.* Yes.

Mr. Att. Gen. Did you aſk him any Queſtions about the Priſoner; or did he tell you of himſelf?

Fletcher. He told me he had been at *Newgate* to ſee Mrs. *Miles*'s Man: I aſked if he ſaid any Thing? He ſaid no; that is not the young Man that I ſaw with the Curtain.

Mr. *Darnell.* The Account I have of *Grove*, is, that he was a Tradeſman, and broke, and now lives by Gaming.

L. C. J. If you have any Thing to examine to his Reputation, you will do well to call your Witneſſes to it. *Grove*, what do you ſay to this?

Grove. When I came from *Newgate*, I thought it was the Man; and I told him no ſuch Thing: I told every body I ſpoke with, that I believed it was the Man.

L. C. J. Did you tell him that you believed the Man that had the Curtain was in a green Coat?---*Grove.* No, not that Night.

Mr. *Darnell.* Did you tell him ſo at any Time?

Grove. Yes; but that was the *Wedneſday* Night; but when I went to *Newgate*, he had a blue Coat; but I always believed him to be the ſame Man.

L. C. J. Did he tell you he had a green Coat on that Night he had been at *Newgate*, or before?---*Fletcher.* It was before.

L. C. J. I underſtood you, that when he came back from *Newgate*, he told you he had nothing to ſay to this Man, for that the Man that had the Curtain had a green Coat and braſs Buttons?

Fletcher. He ſaid he could not be poſitive, for that Man had a green Coat and braſs Buttons.

L. C. J. Did he tell you that Night that he had a green Coat and braſs Buttons?

Fletcher. I can't tell whether it was that Night.

Mr. *Darnell.* You ſay once he told you he had a green Coat and braſs Buttons: What did he ſay when he came from *Newgate?*

Fletcher. He ſaid he could not be poſitive, for that he had a blue Coat on.

Mr. Juſtice *Tracy.* Did you, after you came from *Newgate*, ſay, you could not be poſitive he was the Man?

Grove. I did tell him I could not be poſitive.

Mr. *Thomſon.* Did you tell him you believed him to be the Man?

rove. Yes; I ſaid I did believe it, but I would not ſwear it was he.

Then Holgate *was ſworn.*

Mr. *Darnell.* We call him, to ſhew that at the Fire there was a Man in a green Livery, who was very active there: Pray tell us, Was you at the Fire in *Holborn*, and who did you obſerve there?

Holgate. My Lord, about half an Hour after Ten I was at a Neighbour's Houſe, I heard there was a Mob, and the Meeting-Houſes were burning; upon that I went from thence to my Wife, and told her the Meeting-Houſes were pulled down, and burning in *Holborn*; if you will go, I will ſee what they are doing. There I ſaw a great many Boys bringing Wood and Boards, and throwing them into the Fire: And at the Fire I ſaw a Footman in a green Livery and red Buttons, and red Stockings; I ſaw him jumping, and very jolly. I will not be poſitive that he is our Neighbour's Footman that is ſince gone off, but I did ſee a Footman in a green Livery at the Fire in *Holborn*, at *Leather-Lane* End.

Mr. *Darnell.* What did you ſee him do?

Holgate. I ſaw him jumping and waving his Hat.

Mr. *Darnell.* What Sort of Man was he?

Holgate. Much ſuch a Sort of Man as the Priſoner.

Mr. *Darnell.* Did you know the Footman that is gone off?

Holgate. Yes.

Mr. *Darnell.* Did you ſee the Priſoner at the Fire?

Holgate. No; I am ſure I ſhould have known him, if I had ſeen him.

Mr. *Darnell.* Did you ſtay any Time at the Fire in *Holborn?*

Holgate. I did not ſtay two Moments, but went up to *Hatton-Garden*, and there I ſaw a great many with their Clubs and Staves, crying out *Sacheverel*; one gave me a Stroke on the Head, and aſked me, Why I did not pull off my Hat?

L. C. J. Why ſhould you know the Priſoner at the Bar, if he had been there, and not know the Man in Green, who was your Acquaintance too?

Holgate. My Lord, I was at a Diſtance.

L. C. J. Would not the ſame Diſtance have hindered you from knowing the other?

Mr. *Darnell.* My Lord, I deſire to call a Witneſs or two to the Manner of Life of this *Grove.*

Then Thomas Clark *was ſworn.*

Mr. *Darnell.* Do you know Mr. *Grove?*

Clark. I have known him many Years.

Mr. *Darnell.* What was he?---*Clark.* He kept a Baker's Shop.

Mr. *Darnell.* What became of him?---*Clark.* He broke.

Mr. *Darnell.* What became of him afterwards?

Clark. He went ſomewhere down to the Water-Side, to ſome Place; but what it was I don't know.

Mr. *Darnell.* What does he do now?

Clark. I can't tell; but they ſay he works with his Uncle: I know nothing of him; but he never had a good Character in his Life.

Mr. *Darnell.* How does he employ himſelf?

Clark. He is given to playing, as I have heard ſay.

Mr. *Darnell.* Do you know any Thing particularly?

Clark. No, indeed; I never took ſo much Notice of him: But for the Priſoner, I have known him two Years, and never ſaw any Hurt of him in my Life.

Then Ward *was ſworn.*

Mr. *Darnell.* Do you know this *Grove?*---*Ward.* Yes.

Mr. *Darnell.* What do you know of him?

Ward. He was a Baker in *Hatton-Garden*; I knew him ſeveral Years: I know him to be a Gameſter.

Mr. *Darnell.* What Inſtances can you give of his Gaming?

Ward. He has played with me for one.

Mr. *Darnell.* How often?---*Ward.* Not very often.

Mr. *Darnell.* What do you know of his Play? Does he live by it?

Ward. I can't tell whether he lives by it or no; but he has been by relation a great Gameſter.

Mr. *Darnell.* Do you know of any body's Servant that ſuffer'd by him?
Ward. No.
Mr. *Darnell.* What Sort of Games did he play at?
Ward. At Dice.
Mr. Att. Gen. Do you reckon yourſelf a Gameſter?---*Ward.* No.
Mr. Att. Gen. Did you ever know that Man play with any but yourſelf?
Ward. Yes, at the *Bell* Tavern in *Gray's-Inn-Lane.*
Mr. Att. Gen. How often did you know him play there?
Ward. But once.
Mr. Att. Gen. How long ago was that?
Ward. I can't tell how long; another time he play'd at our Houſe in *Hatton-Garden.*
Mr. Att. Gen. How long ago was that?---*Ward.* I can't juſtly tell.
Mr. *Darnell.* Do you know the Priſoner?---*Ward.* Yes.
Mr. *Darnell.* How long have you known him?---*Ward.* Two Years.
Mr. *Darnell.* How has he behaved himſelf?
Ward. A very honeſt young Man as can come into a Houſe, by all relations that I ever heard of him.

Then Farrington *was ſworn.*

Mr. *Darnell.* Do you know the Priſoner?---*Farrington.* Yes.
Mr. *Darnell.* How long have you known him?
Farrington. I knew him when he lived in *Chancery-Lane.*
Mr. *Darnell.* What do you know of his Behaviour?
Farrington. A very civil young Man; he uſed to fetch Drink at my Houſe: I never heard him ſwear, or knew him guilty of any Ill.

Then Mr. Miles *was ſworn.*

Mr. *Darnell.* Pray, Sir, what Account do you give of the Priſoner?
Mr. *Miles.* He has lived in our Family two Years: He has always behaved himſelf well, and ſoberly, and was addicted to no Ill.
Mr. Sol. Gen. Was you at home that Night?
Mr. *Miles.* No; I was out of Town.
Mr. Sol. Gen. When did you return?
Miles. The *Sunday* following.
Mr. *Darnell.* My Lord, we will not trouble your Lordſhip with any more Witneſſes; we hope we have well accounted for the Time he was out of his Miſtreſs's Houſe, for that ſeems to be all that ſticks upon him, that his being out ſo long might give room for him to be concern'd in this Tumult: But by the Witneſſes it appears, that the Curioſity of ſeeing a Mob, which he had never ſeen before, might take up ſome Part of his Time; and the two Fires being ſo near, that he could not go from one, without ſeeing the other, engaged him to go to them both. There was a Friend too that met him, with whom he walk'd up and down the Street an Hour; but we think it ſhews that he was not a Ringleader, or aiding or aſſiſting in pulling down the Meeting-Houſes, for that Witneſs ſays, they were then carrying the Materials, and the Fire was lighting at the Time when they were together; and that he parted with him, in order to go home, but his Curioſity carried him to ſee that Fire that was then lighting, that he might carry an Account of it.

But upon the main Queſtion, we muſt humbly inſiſt, that there is no Evidence to fix it upon the Priſoner. There are not two Witneſſes to any Overt-Act for the ſame Treaſon, nor do thoſe Witneſſes aſcertain it to be the Priſoner; for now it appears a little plainer, that his firſt Charge was againſt a Footman in a green Livery: He declared it was a Footman in Green with Braſs Buttons; and when he came to *Newgate* to ſee this Man, he believes him to be the ſame Man; that is the moſt of his Evidence; but when he came home then to his Companion, that he lived in the Houſe with, he believed it was not the ſame Man, and he could not ſwear it was the ſame Man, becauſe he had a blue Coat; and now he would carry his Belief ſo far as to believe, that he then had a blue Coat, with black Buttons; and ſurely, Nobody could miſtake a blue Coat with black Buttons, for a green Coat with braſs Buttons: Whatever may be ſuppoſed of the Colour of Blue by Fire-light, altering by that Light towards a Green, yet it can't turn Black Buttons into Braſs ones.

Suppoſing the Perſon whom *Grove* pretends to accuſe were here, yet there are not two Witneſſes to an Overt-Act, for it is only confirm'd by the Confeſſion which is proved by *Lunt*; but we hope the Priſoner is not the Perſon that had the Colours, and therefore there is no Evidence to make him guilty. We can't differ from the Reſolution in the Books in *Meſſenger*'s Caſe, much leſs with your Lordſhip's Reſolution Yeſterday; but the Caſe is entirely different between the Waterman and this Man, for there it did appear that he carried the Branch, and threw it into the Fire; that from thence, he halloo'd, and led a Party, and offer'd to be their Captain, to *Drury-Lane*, and in that manner he took upon him to lead them, and did lead them; but there is not any one Inſtance of that Nature here, there is not any one Witneſs that proves him to be in a Meeting-Houſe, or to have done any thing there, or to have gone from one to another. If he had join'd with them at the firſt Fire, and gone in with them in what they were doing, yet we muſt inſiſt, that it would not make him Guilty of High-Treaſon. In the Caſe in King *Charles* the Second's Time, it was apparent they were all in the Deſign; the Verdict found that they aſſembled; that they arm'd themſelves; that they choſe a Captain; that when the Government thought fit to interpoſe to ſuppreſs them, they ſtruck at the Officer, threw Stones at the Captain of the Guards, expreſs'd their Reſolutions of going to *Whitehall*, and ſhew'd what their Intent was; but no Deſign is proved againſt this Man, and nothing to make it agree with that Caſe: But thoſe Perſons that were by all the Judges acquitted from that Treaſon; we think the Evidence was much ſtronger againſt them, than what is offered againſt this Man: For in the Caſe of *Beadle*, he was proved to be among them; and when the Officer purſued him, he turn'd about, and cry'd to the People to face about, and not to leave him: And though it appear'd he was in the Deſign, and called to the reſt to reſiſt in his Defence, yet he was agreed not to be guilty of High Treaſon, becauſe he was not aiding in pulling down the Houſes; which in thoſe Matters wherein the Judges gave their Opinion, made it High-Treaſon: But as to *Green* in the firſt ſpecial Verdict, and *Beadle*, they agreed, the Verdict was not full enough to convict them.

L. C. J. The Jury found the Evidence, but did not find the Fact which might have aroſe from that Evidence; but if they had found, as the Conſequence of that Evidence, that they were aiding and aſſiſting, they would have been Guilty. And though the Court thought there was Reaſon for the Jury to have ſaid ſo, yet they not having ſaid it, the Court could not ſay it for them.

Mr. *Darnell.* My Lord, we ſay there is no Intention proved againſt him, nor aſſiſting in doing that which is the Crime, in pulling down the ſecond Meeting-Houſe: And as for the firſt, that was pull'd down, and burning, before he came; ſo that he could not aſſiſt in that.

Willis. I deſire *Lunt* may be aſked, If he ſaw me carry any thing to the Fire?

Lunt. I did not ſee him carry any thing.

Willis. Did he ſee any of the Mob take Notice of me?

Lunt. There was Nobody with him, or that took Notice of him: He went from the Fire, after he had ſpoke thoſe Words, very quietly.

L. C. J. Victor, Was you by Mr. *Lunt* when you ſaw the Priſoner carry the Timber?

Victor. He was within the Shop, I believe.

L. C. J. You told us, that you ſaw ſeveral People in the Meeting, breaking it down: Did you ſee the Priſoner there?

Victor. No, I did not.

L. C. J. Pray, whence did he bring that Timber that you ſaw upon his Shoulders?

Victor. I can't tell that.

L. C. J. You did not ſee him bring it out of the Meeting-Houſe, did you?

Victor. No, I did not.

Mr. Sol. Gen. Mr. *Lunt*, Was *Victor* by you when the Priſoner ſpoke to you?

Lunt. He ſtood lower than me: We fill'd up the Door-way: My Hand was on the Side of the Door: Every now and then the Mob would ſtrike at me, as they went by, and were carrying the Wood from the Meeting to the Fire; they would Huzza, and cry, You Dog, who are you for? Mr. *Victor* and I ſtood ſo about half an Hour: I ſtood there before the Fire was lighted, and 'till the Guards came.

Mr. Sol. Gen. How often did you ſee the Priſoner during that time?

Lunt. But once; and that was when he ſpoke thoſe Words to me.

Mr. Sol. Gen. Was *Victor* by you then?

Lunt. Yes; of the Side of me.

Mr. Sol. Gen. Then ſet up *Victor* again. Pray Sir, about this Timber: You ſay you ſaw him with ſome Timber on his Back; Who was by at that Time? Was *Lunt* by?

Victor. I don't know whether he was at the Door, or in the Shop.

Mr. *Thomſon.* Was he coming that Way from the Meeting with the Timber?---*Victor.* Yes.

Mr. *Darnell.* Can you take it on your Oath, that the Man that ſpoke to Mr. *Lunt* was the Man that carried the Timber?

Victor. No, I can't.

Mr. Att. Gen. My Lord, we think the Proof is ſufficient; and notwithſtanding any thing that has been ſaid by the Counſel for the Defendant, it ſtands unimpeach'd, and it is clear, that the Priſoner is Guilty of this Treaſon. The Evidence of both Sides makes it appear, that upon this Day there was an Inſurrection of the People, in order to pull down the Meeting-Houſes, and that they executed their Deſign by pulling down ſeveral at that Time. Mr. *Darnell* don't deny but that, in point of Law, all thoſe People that were gathered together, to execute this Deſign, are equally Guilty of High-Treaſon: So that the Queſtion is only, Whether this Priſoner was one of thoſe People that were gathered together? That which he inſiſts upon is, that though this Man was there, yet no Proof is made that he was aiding towards the carrying on this Deſign; therefore we think what our Witneſſes ſay is conſiſtent, and not impeach'd by what was ſaid of the other Side. The firſt Witneſs that we call'd, though he was not acquainted with the Priſoner, yet he ſays, there was a Man in a blue Livery, that was ſo remarkable in leading the Mob, with a Curtain on a Pole, that he could not but take Notice of it; and that when he went to *Newgate*, to ſee the Priſoner, he took him to be the ſame Man that carried the Colours; and though he can't be ſo poſitive as to ſwear directly, yet he now believes it is the ſame Man, though he can't be poſitive. I am ſure I ſhould be very far from preſſing any thing further than the Nature of the Evidence will bear; therefore I hope I don't miſrepeat what he ſays: Therefore it leaves it ſomewhat uncertain yet, whether the Priſoner at the Bar was the Man that carried thoſe Colours? But that which puts this out of Diſpute, and makes it clear that this is the Man, is *Lunt*'s Evidence, who now appears not to be an Enemy to the Priſoner: He tells you, that *that* Night the Priſoner told him, that they had made him Captain of a Party that Night; that he had made Colours of a Curtain, and that we had burnt the Clock. Now it is very ſtrange, that if he was not concern'd in carrying this Curtain, that he ſhould talk of a Curtain and Colours, and ſay, that he had made Colours of a Curtain. If he was not the Man, it is unhappy that he ſhould, within an Hour after he was obſerved by our Witneſſes, ſay, that he was the Man they had choſen; and that he had made a Colours of a Curtain; and that they had burnt the Clock. It is not to be imagined he would have ſaid ſuch a thing, if he had not been the Man that the others ſaw carrying it; therefore, putting theſe two Witneſſes together, (who are Perſons that no ways appear to be concerned to bring this Man to Juſtice more than any other) and it makes it plain and clear, that this is the Man that flouriſhed the Colours. If ſo, then it is plain this is one Evidence; and I agree, it is neceſſary that there ſhould be another Witneſs to prove ſome Fact, and the Teſtimony of one Witneſs will not be enough, therefore we have produced *Victor*, that perſonally knew this Man. He ſays, he ſaw him with a Piece of Timber on his Shoulders; that he ſaw him throw it into the Fire; and that he ſaw that Man go afterwards and ſpeak to *Lunt*, and *Lunt* told him who he was.

It

It is of Conſequence to all Governments, to make every Body, that is any ways aiding in theſe Diſorders, equally guilty; for it is impoſſible to tell who begins in theſe Caſes: You may know who carries on theſe Things, but you can't tell who begins them; therefore it will not be ſufficient for them to rely on, that he was ſent by his Miſtreſs at that time, for that is all that was proved, that he was ſent out to ſee where the Fire was, and his being ſent out for that Purpoſe will not make him the leſs Guilty, if he did join with them, and aid them in what was done: For if Men are met together to do an unlawful Act, and thoſe that don't know it join with them, they are Guilty; therefore whether he knew of that Meeting, or was only ſent out by his Miſtreſs, yet if it is proved that he did join, and aid and aſſiſt thoſe that were engaged in that Treaſon, he is equally Guilty. As to what was ſaid by *Prior*, who was his Companion, that appears to be juſt at his being ſent out by his Miſtreſs to enquire: He told this Man, that he was ſent out to get Intelligence, but you ſee, that though he was aſked to ſtay and drink with this Man, he would not, but left him, and what he did then, he could not tell; it is therefore likely that he afterwards went to this Buſineſs that he was afterwards unhappily engaged in.

As to what they inſiſt on, that they have called Witneſſes to invalidate the Teſtimony of *Grove*, that he made ſome Miſtake about the Colour of his Cloaths, that is no great Matter to be relied on; for blue and green, by Candle-light, are pretty much of the ſame Caſt, eſpecially at a tranſient View; but you ſee the View he had was ſufficient to know his Face, but the Light of the Fire occaſioned another Caſt upon his Cloaths, therefore his thinking it to be green when it was blue, will make no Difference: And though he don't ſpeak poſitively, but ſpeaks with Caution, and not as a Man would do, that was prejudiced, and came to take away a Man's Life: Though he ſays he can't poſitively ſay this is the Man, yet he ſays he does really think it is. As to the Witneſſes that prove he had a Misfortune, and broke, that may be many an honeſt Man's Misfortune to fail in a Way of Trade: I don't ſee that they do impeach his Credit at all: Though they talk of his playing, I don't find but one Man that has ſeen him play, and moſt People do ſome time or other: I don't find that he has ſwerved, or done any thing foul; but we muſt ſubmit the Matter of Fact to the Conſideration of the Jury: I believe the Matter of Law is agreed: I believe there was a Notion in the World, that it was only a Riot, for which they might be fined, and the like, but the Law is now agreed; and as to the Fact, we muſt ſubmit it to your Lordſhip's Directions.

Mr. Sol. Gen. I think Mr. *Darnell* does agree, that if there was a general Intention to pull down Meeting-Houſes, it would be Rebellion and High-Treaſon. I take it, that it was ſo, is as fully proved as is poſſible, by having ſo many pulled down, and by ſuch a Multitude of People as were got together for that Purpoſe: For it can't be thought, that the People that were at one Houſe intended to pull down that, and thoſe that were at the other Houſes intended to pull down them only; but it muſt be a general Intention to pull down Meeting-Houſes in general; we think, therefore, the general Intention is proved, therefore what *Tolboy* ſays don't confine it: For though he ſays, what they declared was only in regard to Mr. *Burgeſs*'s Meeting-Houſe, yet that don't take off from the Evidence of what paſſed the next Day, when the ſeveral Meeting-Houſes were pulled down; and the Fact, without that Evidence, ſhews the particular Intention; and the Mob that were at *Lincoln's-Inn-Fields*, ſwore, Damn them, they would have them all down; and accordingly they went away to another, and pulled that down; therefore, that there was a general Intention, is ſufficiently proved, and that this Man did act in that Intention. We think it is ſufficiently proved, that he was at two of them; but if it had been but one, it had been the ſame Caſe. But they object, that this is not a legal Evidence; for, ſay they, the Statute reſtrains it, and ſays, that no Confeſſion can be given in Evidence, and the Evidence of *Lunt*, without it, will not do; and *Grove*'s not ſwearing poſitively to the Man, without the Help of *Lunt*, will not be a legal Evidence, ſo as to prove an Overt-Act. This is the Strength of the Objection in Point of Law, and God forbid that we ſhould inſiſt on any thing but what is legal Evidence: It is Juſtice to him, not to offer any ſuch thing, as it is to the Crown, to inſiſt on what is legal Evidence, to bring him to Puniſhment. The Words of the Act are, That no Perſon ſhall be indicted, tried, or attainted of High-Treaſon, whereby Corruption of Blood may be made, or of Miſpriſion of ſuch Treaſon, but by the Oaths and Teſtimonies of two lawful Witneſſes, either both to the ſame Overt-Act, or one to one, and the other to another Overt-Act of the ſame Treaſon, unleſs the Party willingly, in open Court, confeſs the ſame, *&c.* Now in this Caſe, here are two lawful Witneſſes. *Grove* is a lawful Witneſs, he is capable of being a Witneſs; whether what he ſays is ſufficient for the Proof of the Point, muſt be left to the Conſideration of the Jury. If there are two legal Witneſſes, to which there are no legal Objections, it is ſufficient; whether what they ſwear is ſufficient to prove the Fact, is of another Conſideration; but there is not one Word in the Act to reſtrain a Confeſſion from being given in Evidence: He ſhall not be convicted on a Trial, without two lawful Witneſſes; that is the Thing that is provided for, and it was to exclude a Precedent that had been ſettled in *Tong*'s Caſe, in my Lord Chief-Juſtice *Keyling*'s Reports, an Evidence of Confeſſion only, that was proved by two Witneſſes, and that was the Occaſion of making this Law, that his Confeſſion alone ſhould not be ſufficient, without an Overt-Act. This was the Reaſon and Ground of making that Act of Parliament, but it was not deſigned to exclude all Confeſſions. That was Evidence at Law, and always muſt be ſo: That Evidence that comes out of a Man's own Mouth, was always allowed. The Deſign of the Act was to exclude Confeſſions from having the Force of a Conviction, unleſs it were in a Court of Record, and to prevent a Confeſſion proved by two Witneſſes, from being a ſufficient Ground for a Conviction. A Confeſſion is a conſiderable Evidence, and in many Caſes clears a Thing beyond Contradiction; and in this Caſe it ſhews how neceſſary it is; for when Things are tranſacted in the Dark, and it is impoſſible for Strangers to give a clear Deſcription of Perſons, ſurely the Confeſſion of a Man himſelf is the moſt proper Evidence in the World, and the moſt ſatisfactory. This then being a lawful Evidence, it ſtands clear of that Objection: Here are two Witneſſes to the Overt-Act, and this Evidence of *Lunt* is not excluded, but this Confeſſion of the Party is lawful to be given in Evidence.

This being the State of the Matter, How ſtands it then? It is agreed he was at the Bonfire in *Holborn*; he was ſent out for that Purpoſe: The Fire was ſeen at his Miſtreſs's Houſe, and he was ſent out to enquire after the Matter. That there was a Man there in a blue Livery, is proved by ſeveral People, and it is proved tha the had a blue Livery. *Grove* ſays he ſaw a Man, he can't tell whether he was in blue or green, with a Standard, in *Holborn*: He ſays, he don't know whether he was in blue or green, but he took him to be a Man of that Size, and he ſuppoſes him to be the Man. But here is ſtill a Doubt, whether this is the Man that carried the Standard; and how is that cleared? Now this, with Submiſſion, is cleared by the Man himſelf, if that be Evidence, which we inſiſt upon it it is. This Declaration to *Lunt*, that he had made Colours of a Curtain, and that he was choſe Captain of a Party, that does explain it, and is not anſwered by any thing they have offered to the contrary. As to his acting in the Tumult in *Leather-Lane*, *Victor* ſwears, that he ſaw him with a Piece of Timber on his Shoulder, and that he carried it, and threw it into the Fire. *Lunt*, as to every thing he ſpeaks, is clear: He proves that he ſpoke ſome Words to him; and as to what *Victor* ſays, he is as clear, that he had the Wood, and threw it in. The only Queſtion then will be, Where he had this Wood? Whether he had the Wood which he threw into the Fire, made of the Materials of the Meeting Houſe, from any other Place? They give you ſome Evidence, that he was going home quietly; and that they parted about Eleven at *Brooks*'s *Market*: But it is plain, he did not go home 'till juſt Twelve, for ſo all the Family agree; ſo that that Time is to be accounted for, which he might have ſpent at this Bonfire, and in this Tumult. There is another Man to anſwer the Buſineſs of what they call the High Church Standard: He ſays, there was a Man in a green Livery which he ſaw, and thought he knew him, but could not be poſitive, becauſe he was at a Diſtance; but if it had been this Man, he believes he ſhould have known him; but there is as little Reaſon for him to know the one as the other. The Man in the green Livery, he ſays, is run away, but he ſays nothing as to the Braſs Buttons; and it is eaſy to miſtake between green and blue.

I ſhall not urge the Evidence further than it is reaſonable; theſe are Circumſtances which will be under the Conſideration of the Jury. But ſuppoſing the Man to be concerned in this Manner, acting as the Queen's Evidence have proved, it will be High-Treaſon within the Caſe in my Lord *Keyling*'s Reports, and is not diſtinguiſhed by what Mr. *Darnell* offered. He ſays, there was leading and arming, and they ſtruck at the Guards; ſo here was leading, for Nobody denies but they had a Standard: The only Queſtion is, Whether the Priſoner carried it? And in the other Mob in *Lincoln's-Inn-Fields*, they were led, and hallooed away to *Drury-Lane*. And as to the Caſe of *Beadle*, which he would compare it to, there was no Act that was done by him; beſides, the Verdict was defective, in not finding the aiding and aſſiſting; for though they found the Facts, yet they did not draw the Concluſion from thoſe Facts. As to what has been ſaid to the Reputation of *Grove*, I don't find it any ways affects him; it is not proved that he has cheated, or that he is a common Gameſter, or that he lives by that Way. As to the Reputation of the Priſoner, there may be many honeſt Men that might think they did Service at this time, and he might be deſired among the reſt; but that is no Argument why he ſhould not be concerned in the Fact: Whether he was or not, is what we muſt ſubmit to the Conſideration of the Jury.

Mr. *Thomſon*. My Lord, as to the Matter of Law, it has been fully ſpoken to, and that the Intention was general, is proved; the only Queſtion is, Whether the Priſoner was aiding, and ſo proved in a legal Manner? I will only ſtate how each Overt-Act is proved: The firſt Act is his going with a Piece of Wood on his Shoulder, and throwing it into the Fire; That *Victor* ſwears poſitively. I aſked, Whether he was coming with it as from the Meeting-Houſe? and he ſaid he was: As to that, it is plainly ſworn upon him as to the Man.

The other Overt-Act is from *Grove*; there is indeed ſome Uncertainty as to the Perſon, *Grove* was not indeed very poſitive; he did obſerve a Man at the Fire; he could not ſay whether he had on a blue Livery or green; but when he went to *Newgate* to ſee the Priſoner, he did ſay he believed him to be the Man. Indeed they pretend that he ſaid ſomething contrary to his Companion; but all he ſaid then was, that he could not be poſitive, but he did ſay, he believed him to be the Man. Now there being this Uncertainty, what do we call *Lunt* to his Confeſſion of? If we call him to prove the Overt-Act by his Confeſſion only, there might be ſome Colour to object to it: But the Fact is proved to be done by *Grove*, and we call *Lunt* only as to the Identity of the Perſon. He only explains what *Grove* had ſworn before: He ſwore the Colours were diſplayed, and the Confeſſion is only as to the Identity of the Perſon. As to the Reputation of *Grove*, they did endeavour to aſperſe him, but I think they could not make any thing out: They don't pretend to prove any Malice in him; nay, he is the rather to be credited, becauſe he will not be poſitive. If he had *had* any Malice, he would have ſworn poſitively, but you ſee he will not be poſitive.

Something was mentioned that there was a Man in a green Livery there, from whence they would infer, that he was the Man that was thus Inſtrumental, and that it was not the Man in the blue Livery; but that can't be he, becauſe he had red Buttons and red Stockings; ſo that *that* ſeems not to have much in it. They pretend to account for him as if he was not there, when *Pryor* ſays he met him at Eleven, but he did not go home 'till Twelve: So that we think having thus proved by *Victor* poſitively, by *Grove* thus circumſtantiated in this Manner; the Man's Confeſſion

feſſion coming afterwards by *Lunt*, which declares him to be the Man that did the Fact, we think it brings it home to the Priſoner. But we ſubmit it to your Lordſhip and the Jury.

Mr. *Darnell*. My Lord, as to the Matter of the Confeſſion, I think what *Mr. Sollicitor General* ſays, by way of Anſwer, will lay aſide the Statute of King *William*, for it is, in Effect, to ſay, that if the two Witneſſes to an Overt-Act are uncertain as to the Perſon, his Confeſſion muſt fix it upon him. If two Witneſſes will ſwear that a Man in a blue Coat did commit High-Treaſon, but are uncertain as to the Man, it ſhall be brought home to any Man in a blue Coat, if he ſhall come and ſay that he did the Fact; ſo that the Confeſſion is entirely the Evidence, for the other Evidence could not convict him without it.

L. C. J. Do you apprehend that *Grove*'s Evidence is not to be conſidered by the Jury? Is it only, that ſome Man or other did diſplay the Colours? Does not his Evidence go further? He ſays he went to ſee the Man in *Newgate*, and he believes, that Man that he ſaw there was the ſame: Now how far that will weigh with the Jury, is of another Conſideration: And as to the Caſe of *Beadle*, the Fact was found there, but the Jury not finding that he was aiding and aſſiſting, the Court could not ſupply it for them.

L. C. Baron. You have laid a Streſs upon that which is found in the ſpecial Verdict. See what the Judgment of the Judges was. But as to *Green* in the firſt ſpecial Verdict, and *Beadle* in the third ſpecial Verdict, we all agreed, that the Verdict was not full enough, as to them, for us to judge it Treaſon in them, becauſe the Verdict only finds that they were preſent, and finds no particular Act of Force committed by them; and doth not find that they were aiding and aſſiſting to the reſt: And it is poſſible one may be preſent among ſuch a Rabble, only out of Curioſity to ſee, and whether they were aiding and aſſiſting is Matter of Fact, which ought to be expreſly found by the Jury, and not be left to us, upon any colourable Implication; and accordingly thoſe two were diſcharged.

L. C. J. Gentlemen of the Jury, *Francis Willis*, the Priſoner at the Bar, ſtands indicted before you, for that he, upon the firſt Day of *March* laſt, with a great Number of others, did levy publick War againſt her Majeſty. The Proof that has been offered by *Mr. Attorney*, and the Counſel for the Queen, has tended to ſhew, that there was a general Deſign of pulling down all the Meeting-Houſes; and that this Priſoner did aſſiſt in it, did carry Colours in it, and did other Acts that gave Aſſiſtance in it: This is what they propoſed to make out againſt him.

The Evidence was firſt *Tolboy*, who ſays, that the Day before he was going through the *Temple*, and there was a great Mob that attended Dr. *Sacheverel* from his Trial, and among them he heard a Diſcourſe of pulling down Mr. *Burgeſs*'s Meeting-Houſe; he heard no other mention'd; ſome were for pulling it down then; others were for leaving it 'till the next Night, and others 'till the Event of Dr. *Sacheverel*'s Trial. What Determination they came to, he don't know, for he went away; ſo that his Evidence goes no further than proving a Deſign to pull down one Meeting-Houſe.

The next Witneſs is *Grove*; he gives an Account of two Meeting-Houſes pull'd down, and Fires made from the Materials, one in *Holborn*, the other in *Hatton-Garden*; That at that Fire in *Holborn*, he ſaw a Man with a Curtain on a Pole, and he called it High-Church Standard, and was active among the People; ſtopt Coaches, and got Money from thoſe that were in them, and made them cry out as he did. As for the Perſon, he can't ſay the Priſoner is he. He ſays he took notice of him, he was in a Livery; and that he went to *Newgate*, and ſaw one, who, he can't be poſitive, but he believes to be the ſame that he ſaw carrying the Curtain: but whether it is the Priſoner at the Bar, that he can't ſay: For he ſays he has not the ſame Cloaths, nor Wig on, and that makes him doubtful. Being aſked, What Colour his Coat was, he is not ſure whether it was blue or green; but he ſaid, he rather believed it was blue.

This not being enough to bring it home to the Priſoner, they call another Witneſs, who was *Hill*, who ſhewed him the Priſoner. And they brought *Cubwidge*, who went with him; and they tell you, that the Man they ſhewed to him in *Newgate*, was the Priſoner at the Bar; and theſe being laid together, it amounts to the ſame Thing as if he had ſworn againſt the Priſoner, as he did againſt the Man in *Newgate*; that is, that he believed him to be the ſame Perſon that carried the Colours.

The next is *Victor*; he ſays, that after the Fire at *Holborn*, they came to *Leather-Lane*; that they got into the Meeting-Houſe there, and work'd hard to pull it down, but he don't ſay the Priſoner was in the Meeting-Houſe: But the Fire they made was in *Hatton Garden*, and there he ſaw the Priſoner carrying a Piece of Wood, and throwing it into the Fire, and making an Huzza. He don't ſay where he had that Wood; he don't ſay that he ſaw him bring it out of the Meeting-Houſe, and he did not know him at that Time, but he kept his Eye upon him; and not long after, he came by Mr. *Lunt*'s Door, and the Priſoner ſpoke to *Lunt*: What he ſaid, he can't tell, but he aſk'd *Lunt* if he knew him; *Lunt* told him he did; and when he was come ſo near, he does take upon him to ſay, that he remembers his Face, and he takes him to be the ſame Perſon. He was aſk'd as to his Features, but he don't go about to diſtinguiſh them; and it is difficult for a Man to deſcribe thoſe Particulars, by which a Man diſtinguiſhes one from another.

Then *Lunt* is call'd, and he confirms, that the Priſoner was at the Fire at the ſame time that *Victor* was at his Door; that it was Eleven at Night; and that the Priſoner ſpoke to him; that his Boy aſk'd him, What, *Frank*, are you one of them? And thereupon he ſaid, They have made me a Captain of a Party; I took a Window-Curtain, and made it Colours; and we burnt the Clock. This they would apply to clear that which *Grove* ſpeaks a little more doubtfully, when he ſays only, that he believes him to be the ſame Perſon as he ſaw in *Newgate*.

The next Witneſs is *Orrel*, and he can't charge any thing upon the Priſoner, but gives an Account of the pulling down the ſeveral Meeting-Houſes, and the ſeveral Mobs that were in *Lincoln's-Inn-Fields*, *Drury-Lane*, *Holborn*, and *Black-Friers*, and their making general Declarations, that they would have them all down. And thus far his Evidence is material, that there was a Deſign to pull them all down; it was publickly declared, and put in Execution, as far as they had Time. Actions declare the Intentions; for when it breaks out into Action, then the Deſign appears. He ſaid ſomething further, which is, that he ſaw a Footman in a blue Livery, that was buſy at the Fire, and encouraging the People to throw the Wood in. He ſays he was a well-made Man, much of the Size of the Priſoner. This is the Evidence produced againſt the Priſoner; and upon that you will take notice it is made out, that there was a general Deſign put in Execution, of pulling down the Meeting-Houſes; and that he was at one Fire in *Hatton-Garden*; and there is only the Belief of the Witneſs ſo ſtrengthen'd as to his being at the other.

On the other Hand, the Priſoner in his Defence tells you, that he is Servant to a Gentlewoman in *Grevill-Street*; that the Family being going to Bed about Ten o'Clock, and ſeeing a Light in the Street, ordered him to ſee what was the Matter: This was after the Clock had ſtruck Ten. He went into *Holborn*, and ſaw the Fire; but as he pretends, did not come near it; and then he came back to his Miſtreſs's Houſe; and ſo they inſiſt, that they have given an Account of the whole Time he was out. The firſt Witneſs they produced was Mrs. *Briſco*, who was the Daughter of his Miſtreſs; ſhe tells you the Occaſion of ſending him out; that ſhe obſerved a Light, and directed him to go; and tells you the Time, that he came back before the Clock had ſtruck Twelve; and that ſhe did expreſs her Anger for his ſtaying ſo long. Mrs. *Miles* confirms the ſame; and being aſk'd what Account he gave when he came back, both they and the Maids ſay, he gave no Account of the Fire; but ſhe hearing that *Lunt* had ſomething to ſay againſt him, and taking notice that he was dejected, aſk'd him, If he had done any thing? And he ſaid, Nothing to harm him. *Hodges* ſpeaks of his going out, but not of his returning. *Elliot* ſays, ſhe let him in, but did not hear him ſay any thing at all about the Fire; but ſhe ſays he was in a blue Livery. Then they call *Pryor*, and he tells you, he was coming from *Weſtminſter* to *Clerkenwell*, he ſaw the Fire in *Holborn*, and at the End of *Leather-Lane* he ſaw the Priſoner looking on, but doing nothing, none of the Mob with him; that the Priſoner and he walked along *Leather-Lane*, and it was propoſed, that they ſhould drink together, but they walking together, obſerved a Fire making in *Hatton-Garden*; that they walk'd by the Street where his Miſtreſs lived, as far as *Brooks-Market*, and there they parted, and the Priſoner turn'd towards his Miſtreſs's Houſe, and, as he thought, went home. Then they produce *Fletcher*, and he ſpeaks as to *Grove*'s Evidence: And to take off from that Credit that otherwiſe his Teſtimony would have, he ſays, that *Good-Friday*, at Night, he told him the Priſoner was not the Man, for the Perſon he ſaw had a green Livery, and Braſs Buttons; ſo he ſaid at firſt: but upon Enquiry a little more particularly, he did not tell him at that Time that it was a green Livery, but ſome Time before: And *Grove* being call'd again, does own the ſame; and that he ſaid he could not be poſitive, and that is what he now ſays, and only ſays, he believes him to be the ſame, and that he told the Witneſs ſo at that Time. *Holgate* ſays, that about half an Hour after Ten he heard of the Mob, and went to ſee it; that he went to the Fire in *Holborn*, and there he ſaw a Footman in Green, but he had red Buttons, and the Priſoner's Livery was Blue trimm'd with Black, and black Buttons: But he ſays he ſaw a Footman there in Green, which is offer'd, to let you ſee that there might be another Perſon that *Grove* did really ſee. Then *Clark* is brought to give ſome Account of *Grove*; he ſays he kept a Shop, and broke, and never had a very good Character. *Ward* ſays the ſame; and that he was a Gameſter; and that it was reported he uſed to get his Living that way: And he tells you, the Priſoner is of a good Reputation; and thoſe of the Family ſay as much of him.

This is the Subſtance of the Evidence on both Sides. The Uſe that the Counſel for the Priſoner would make of their Evidence, is firſt, to ſhew that they have given an Account of his Time; that he was otherwiſe employed than in the Manner the Witneſſes for the Queen have given an Account of. Now it is certain, they have not; for they give an Account only of a Walk from *Holborn* to *Brooks-Market*, whereas his own Witneſſes ſay he was out at leaſt an Hour and an half, ſo that there was Time enough for him to be there: And though that Witneſs ſaw him going homeward, and not to the Fire, yet it is certain, he did not go home then, and that he was at the Fire, becauſe two Witneſſes ſwear he was at the Fire; and it does appear that he was at both the Fires. Before I ſtate that, give me leave to ſay, that there is a full Proof of a general Deſign put in Execution, of pulling down the Meeting-Houſes, ſo any one that is aiding in that, is guilty of High-Treaſon, though he were not privy to the firſt Deſign; for in High-Treaſon there is no ſuch thing as Acceſſary; all that are Actors are equally guilty, and that was the Caſe of the Lord *Eſſex*: He went with ſome Forces to remove ſome evil Counſellors, and came to the City to deſire Aſſiſtance; ſome Forces he had aſſembled in his own Houſe; others join'd him in the City; it was adjudged they were all guilty of High-Treaſon, though they did not know of his Deſign; and thoſe that were accidentally there, and did depart, it was ſaid, were entitled to Her Majeſty's Grace; but it is not ſaid they were Not Guilty. So was the Caſe of the Bawdy-Houſes; yet it is not ſaid, that any of them were the Perſons that formed the Deſign of pulling them down.

You are therefore to conſider, that it is not enough to charge the Priſoner, that he was at the two Fires: It is not enough that there was Time for him to do what he is charged with, but you are to conſider what is proved on him that he did. You obſerve what is objected as to *Grove*, that there is a great Uncertainty as to his Evidence, and that his Credit is not fair: He don't charge the Priſoner poſitively, nor ever did. He differed as to the Colour of his Cloaths: And though it is rightly obſerved, that Blue and Green are not eaſily diſtinguiſhed by the Light of the Fire, yet that is not the Objection; the Objection is, that the Witneſs at firſt declared, he believed it to be Green, and now he has told you, that he believes it to be Blue, and that is not conſiſtent, and does therefore a little concern his Credit in this Matter, that he has changed his Evidence. Then they ſay, that he did not ſee him at the Meeting-Houſe:

He ſaw ſomebody carrying Colours, and believes this to be the Man; but he ſays, he was not near enough to diſtinguiſh his Cloaths, ſo he might not be able to diſtinguiſh his Face. But then they bring ſome Witneſſes to ſhew he is not a Man of ſo clear a Credit, but they don't charge any great Matter upon him. As for his having broke, that may be a Misfortune that may attend any Man: But then they would ſupport this by the Confeſſion he made to *Lunt*, who ſwears, that he ſaid he made Colours of a Curtain. Now that may ſeem to give ſome Colour to it; but I ought to take notice of the other Part of his Confeſſion, that they had made him Captain of a Party, which don't appear to be likely; for as he was moving from one Party to another, it would be very natural for the Captain to have his Mob with him, but it is plain he was unattended in going from one Fire to another. When he was at that Fire in *Hatton-Garden*, he went away alone, as *Lunt* ſays: And they don't ſay that he did encourage the Mob. He did throw down a Piece of Wood, and huzza, but he did not much encourage others. As to the Piece of Wood, one of the Witneſſes did not ſee it, and the other that did ſee it, did not ſee him in the Meeting-Houſe; ſo that it is not proved he was at either of the Meeting-Houſes, though he was at the Fires. And you may conſider another Circumſtance, and that is, that this Witneſs, *Victor*, did not know him before, nor did he know what Cloaths he had on; and if he had not come nearer to him, to *Lunt*'s Door, in Probability, he had not known him again; but he ſays he ſaw him throw a Piece of Wood into the Fire; and he ſays he kept his Eye upon that Man, and ſaw him come up, and ſpeak to *Lunt*. Now you will conſider, whether ſuch a Man might not, in a Crowd, ſlip out of his Eye, and he might take another for him; for *Lunt*, that knew him, ſays, he did not ſee him have any Timber at all.

Theſe are the Obſervations that, I apprehend, may be moſt proper for me to make to you. As for the Law, if you take it that he is the Man that had the Colours in *Holborn*, and afterwards came to the other Fire, and threw the Piece of Timber in there, he is undoubtedly Guilty of High-Treaſon: Therefore you muſt conſider, firſt, how far you believe he is the ſame that carried the Colours in *Holborn*, and how far you take him to be concern'd in pulling down the Meeting-Houſe in *Leather-Lane*. I ſhould take notice of another Thing, that there was a Footman in Green, at the Fire in *Holborn*, who was very active; and that Man could not miſtake the Colour of Blue and Green, becauſe he knew the Priſoner: Now that being ſo, it does appear there was a Footman in Blue, and another in Green, that was active at the Fire in *Holborn*, and one of theſe two, perhaps, had the Colours; the Queſtion is Which? *Grove* firſt ſays, the Man that had the Colours was in Green, and then he ſays he was in Blue. Now if the firſt be right, that he was in Green, it does appear there was ſuch an one in Green: If you believe he was the Perſon that did make uſe of theſe Colours, and that he was aſſiſting in pulling down the Meeting-Houſe in *Hatton-Garden*, then you are to find him Guilty: If you think he was not the Perſon, you will acquit him.

Then the Jury withdrew, and the Court adjourn'd till Five o'Clock, when the Jury brought in their Verdict.

Cler. of Arr. *Francis Willis*, hold up thy Hand. Look upon the Priſoner: How ſay you? Is he Guilty of the High-Treaſon whereof he ſtands indicted, or Not Guilty?

Foreman. Not Guilty.

Cler. of Arr. Did he fly for it?

Foreman. Not that we know of.

LVIII. *The Trial of* George Purchase, *for High-Treaſon, in levying War againſt Her Majeſty, in the Kingdom, under pretence of pulling down Meeting-Houſes.* 9 Annæ, 1710.

[*At the* Seſſions-Houſe *in the* Old-Bailey.]

Domina Regina verſus Purchaſe.

Die Sabbati Viceſimo Primo die Aprilis Anno Dominæ & Reginæ predicto.

THE Court being reſumed, as in the Trial of *Francis Willis*, and the ſame Judges being preſent,

Cler. of Arr. *Middleſex* Cryer, make Proclamation.

Cryer. O Yes, O Yes; You good Men of the County of *Middleſex*, ſummon'd to appear here this Day, to try between our Sovereign Lady the Queen, and the Priſoners that ſhall be at the Bar, anſwer to your Names as you ſhall be call'd, every Man at the firſt Call, upon Pain and Peril ſhall fall thereon.

Then the Jury that were return'd on the Pannel were all call'd over, and the Appearances of all thoſe that anſwer'd to the Call were recorded.

Cler. of Arr. Set *George Purchaſe* to the Bar. *(Which was done.)*

Cler. of Arr. *George Purchaſe*, hold up thy Hand. *(Which he did.)*

Cler. of Arr. You the Priſoner at the Bar, theſe good Men, whom you ſhall hear call'd, and do now perſonally appear, are to paſs between our Sovereign Lady the Queen and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to ſpeak to them as they come to the Book to be Sworn, and before they be Sworn.

Cler. of Arr. *Thomas Sutton*, Eſq. *(Who appear'd.)*

Cler. of Arr. Hold Mr. *Sutton* the Book.

You ſhall well and truly Try, and true Deliverance make between our Sovereign Lady the Queen, and the Priſoner at the Bar, whom you ſhall have in Charge, and a true Verdict give according to your Evidence. So help you God.

Cler. of Arr. *John Furneſs.* *(He appear'd, and was ſworn.)*

In like manner the other Ten Gentlemen appear'd, and were ſworn, whoſe Names follow:

JURY.

Thomas Sutton, Eſq.	*William Hargrave*,	*Richard Beatknife*,
John Furneſs,	*John Meard*,	*Richard Hazzard*,
John Parſons,	*Edward Boſwell*,	*Francis Higgins*,
Joſeph Parſons,	*Robert Breakſpear*,	*Humphry Newman.*

Cler. of Arr. Cryer, count theſe.

Thomas Sutton.

Cryer. One, *and ſo of the reſt.*

Cler. of Arr. *Humphry Newman.*

Cryer. Twelve, good Men and true, ſtand together, and hear your Evidence.

Are you all Sworn, Gentlemen?

Cler. of Arr. Cryer, make Proclamation.

Cryer. O Yes; If any one can inform my Lords the Queen's Juſtices, the Queen's Serjeant, the Queen's Attorney-General, or this Inqueſt now to be taken, of the High-Treaſon of which the Priſoner at the Bar ſtands indicted, let them come forth, and they ſhall be heard, for now the Priſoner ſtands at the Bar upon his Deliverance; and all others that are bound by Recognizance to give Evidence againſt the Priſoner at the Bar, let them come forth, and give their Evidence, or elſe they forfeit their Recognizance. And all Jurymen of *Middleſex* that have appear'd, and are not ſworn, may depart the Court.

Cler. of Arr. *George Purchaſe*, hold up thy Hand. *(Which he did.)*

Gentlemen of the Jury, look upon the Priſoner, and hearken to his Cauſe. He ſtands indicted by the Name of *George Purchaſe*, late of the Pariſh of St. *Andrew*, *Holborn*, in the County of *Middleſex*, Labourer, *for that he not having the Fear of God before his Eyes, but being moved and ſeduced by the Inſtigation of the Devil*, &c. (prout *in the Indictment*, mutatis mutandis,) *againſt the Peace of our Sovereign Lady the Queen, her Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided.* Upon this Indictment he has been arraign'd, and thereunto hath pleaded Not Guilty, and for his Trial hath put himſelf upon God and his Country, which Country you are. Your Charge is to enquire whether he be Guilty of the High-Treaſon whereof he ſtands indicted, in Manner and Form as he ſtands indicted, or Not Guilty. If you find him Guilty, you are to enquire what Goods and Chattels, Lands and Tenements he had at the time of the High-Treaſon committed, or at any time ſithence. If you find him Not Guilty, you are to enquire whether he fled for it: If you find that he fled for it, you are to enquire of his Goods and Chattels, Lands and Tenements, as if you had found him Guilty. If you find him Not Guilty, nor that he fled for it, you are to ſay ſo, and no more, and hear your Evidence.

Mr. *Thomſon.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, *George Purchaſe*, the Priſoner at the Bar, ſtands indicted, for that he, not having the Fear of God before his Eyes, but being moved by the Inſtigation of the Devil, and deſigning to withdraw the cordial Love and natural Obedience, which true and faithful Subjects of our Sovereign Lady the Queen do and ought to bear towards Her, and intending to diſturb the Peace and common Tranquillity of this Kingdom, on the Firſt of *March* laſt, in the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, traitorouſly compaſs'd and imagin'd to levy War, and ſtir up Rebellion and Inſurrection againſt our ſaid Lady the Queen within this Kingdom: And that he might accompliſh his ſaid traitorous Imaginations and Deſigns, on the ſaid Firſt of *March*, and in the ſaid Pariſh being aſſembled, with a Multitude and great Number of People, armed and arrayed in a warlike Manner, he did then and there unlawfully and traitorouſly levy War againſt our ſaid Lady the Queen, contrary to the Duty of his Allegiance, againſt the Peace of our ſaid Lady the Queen her Crown and Dignity.

To this Indictment he has pleaded Not Guilty.

Gentlemen, we ſhall call the Evidence for the Queen, and if they prove the Charge, as laid in the Indictment, we doubt not but you will find him Guilty.

Mr. Att. Gen. My Lord, the Priſoner at the Bar ſtands charged with an Indictment of High-Treaſon. The Species of High-Treaſon has been open'd by the Gentleman that open'd the Record: We ſhall prove it by calling Witneſſes to ſhew, that he was one of thoſe wicked Perſons that did aſſemble themſelves in *Drury-Lane:* We ſhall ſhew, that this rebellious Aſſembly was got together to do Right, as they call'd it, to a Gentleman who was under a Proſecution of the Houſe of Commons; his Name is known, I mean Dr. *Sacheverel*; they reſolved, that to do him Juſtice, they would be revenged on the Meeting-Houſes of the Diſſenters, and therefore they reſolved to pull them all down: That this Deſign was framed in that Aſſembly that uſed to attend Dr. *Sacheverel* to and from his Trial; it was there reſolved to pull down the Meeting-Houſes in and about the City: That in purſuance of that Deſign, they did meet in ſeveral Places in this County, and the City: That the Priſoner was among thoſe that aſſembled in *Drury-Lane*; that he was with his Sword drawn; that when the Guards were come (for they were too many to be withſtood by the Civil Government) the Conſtables and Watch were too few to withſtand that Aſſembly, therefore it was neceſſary, for the Preſervation of all honeſt Men's Lives and Eſtates, for to ſend the Guards to ſuppreſs this Tumult; and it was great Grace in Her Majeſty to have that Regard to her

People.

People. When they came, they uſed them with more Tenderneſs than they need have done; they ſpoke to this Man to put up his Sword, and be gone: No, he came with a Reſolution, and till that was done, he would not put it up. They came the ſecond Time, and aſked him, Do you know that you are reſiſting Authority, in oppoſing the Queen's Guards? You are oppoſing the Queen's Perſon, therefore pray be gone: No, he perſiſted in it, and had the Courage, or Impudence, to aſſault the Officer that was at the Head of the Guards, and would have killed him, if one of the Guards had not, by a lucky Stroke, beat his Sword down. He was ſo devoted to the Cauſe, that he declared he would loſe his Life in the Cauſe; and what was this Cauſe? It was oppoſing a juſt and neceſſary Proſecution, that was carrying on by the Commons of *England*, before the greateſt Court in *England*, and, perhaps, in *Europe*; and they thought fit to find him guilty of the Charge that was laid againſt him. This gave theſe People Occaſion to exerciſe their Revenge on all the Meeting-Houſes. We have had the Determination of the Court oftentimes, that this is levying War within the Statute of 25 *Edw.* III. When we have made this appear, we don't doubt but the Jury will find him guilty.

Mr. Sol. Gen. My Lord, we will call our Witneſſes, and prove the Facts.

Then Thomas Tolboy *was ſworn.*

Mr. Att. Gen. Pray give an Account if you ſaw any Tumult, or Number of People, that attended Dr. *Sacheverel*; and what Diſcourſe you heard among them; and what Reſolution they came to.

Tolboy. As I was paſſing through the *Temple*, on *Tueſday* Night, I ſaw a great Number of People that attended him: I there heard them reſolve upon demoliſhing Mr. *Burgeſs*'s Meeting; ſome were for doing it then; others for leaving it till the next Night.

Mr. Att. Gen. What Night was this?—*Tolboy.* It was the *Tueſday* Night.

Mr. Att. Gen. Was it before the firſt of *March?*---*Tolboy.* Yes, it was.

Mr. Att. Gen. Was it reſolved by more than one?

Tolboy. By a great many.

Mr. Att. Gen. Then you take it to be general?---*Tolboy.* Yes.

Purchaſe. Did you ſee me there?---*Tolboy.* No.

L. C. J. Did you ſtay there any Time?

Tolboy. No; I only heard them diſcourſe of it as I paſſed along.

Mr. Baron *Bury.* Did you ſtay till they came to a Reſolution? Or were they only talking of it?

Tolboy. They came to that Reſolution then.

Mr. Baron *Bury.* Did you ſtay till they were agreed upon it?

Tolboy. It was agreed to pull down the Meeting-Houſes, though the Time was not fixed.

Mr. Baron *Bury.* Did you know any of them that this was agreed by?

Tolboy. No, none of them.

Mr. Baron *Bury.* What did you hear them ſay?

Tolboy. I heard them reſolve on demoliſhing Mr. *Burgeſs*'s Meeting. Say they, Come Boys, we will demoliſh Dr. *Burgeſs*'s Meeting; others ſaid, No, we will defer it to the End of the Trial.

Then William Orrel *was ſworn.*

Orrel. My Lord, before I give my Evidence, I beg Leave to ſpeak a few Words. *Purchaſe*'s Wife has been in my Neighbourhood, and offered Money to ſeveral People to come and ſwear againſt me, to take away my Reputation: And Yeſterday a Perſon came into Mr. *Leonard*'s Coffee-houſe, and ſaid publickly, That I was perjured; that when I ſwore againſt *Willis* I was perjured; that the Jury would not believe me; and that I was reprimanded by the Court and the Queen's Counſel. My Lord, I deſire I may clear myſelf.

Mr. Att. Gen. There is an Information laid before me, which I ſhall take Notice of in a proper Place; for it is an intolerable Thing, in any Government, that when we are proceeding in a judicial Way; that when People have the Benefit of the Law that was made for them, a Copy of the Indictment and of the Pannel, Liberty to examine Witneſſes, and aſk what Queſtions they think proper; and they cannot ſay, but that there has been a Tenderneſs in us, that are the Proſecutors, not to preſs Things further than the natural Import of them; yet that ſuch Practices ſhould be uſed to diſcourage the Queen's Evidence. I have an Account, that *John Roberts*, a Mathematical Inſtrument-maker, has, at *Leonard*'s Coffee-Houſe, affirmed, that the Queen's Witneſs was a perjured, forſworn Villain, in giving his Evidence here. I ſhall, in a proper Time, endeavour to bring him to Juſtice for it.

L. C. J. It was not improper for him to mention it here. I was ſo far from reproving him, or thinking his Evidence falſe, that I never heard a Man give a fairer, or better Evidence; and no one Witneſs at either Trial oppoſed one Word he ſaid.

Mr. Att. Gen. Mr. *Orrel*, pray conſider you are now upon your Oath; therefore, without Regard to Threats, you muſt ſpeak the Truth, and all the Truth, and God forbid you ſhould be afraid of it.

Mr. Sol. Gen. Was you abroad on *Wedneſday* the firſt of *March?* What did you obſerve of the pulling down any Meeting-Houſes? Give an Account of all the Places you were at, and what Concern the Priſoner had in it.

Orrel. About ten o'Clock, or a little before, I went to *Leonard*'s Coffee-Houſe, and hearing that they were pulling down ſeveral Meeting-Houſes, I went with another Gentleman, Mr. *Hawkins*, directly to *Fetter-Lane*: When I came there, I ſaw Abundance of People, a great Mob, carrying the Materials from Mr. *Bradbury*'s Meeting-Houſe into *Holborn*. I aſked the People where they carried them? They all ſaid to *Holborn*. When I had ſtood there a little Time, ſays I to my Friend, Let us go into the Meeting-Houſe; I will ſee; it may be, I may know ſomebody there. I went through a dark Paſſage, and narrow Entry: When I came in, Lord have Mercy upon me, ſaid I, it is all down: I turned back to my Friend, Mr. *Hawkins*; This is deſtroyed, ſaid I, let us go ſee where they burn it. We went to *Holborn*, and all the Way we ſaw Abundance carrying Wood quite from the Meeting-Houſe to the Fire in *Holborn*. We made no Stay at the Fire, but immediately went through *Turnſtile*, and down by *Lincoln's-Inn* Garden-Wall, to the Fire there, which was made of Mr. *Burgeſs*'s Meeting-Houſe, which I had been in two Hours before, and ſaw them pulling it down. When we had been there a little while, I ſaid to my Friend, Let us go towards the other Part of the Town, and ſee what is doing there. We went along that Side of *Lincoln's-Inn-Fields*, where Mr. *Child*'s Houſe is: When we came to the Corner, by my Lord Chancellor's, at my Lord's Door, there ſtood a Chariot; ſaid I, I believe there is ſomebody from Court, I hope there will be a Power, by-and-bye we ſhall have the Guards. We made no Halt there, but went ſoftly towards the Arch: Before we came to it, I ſaw a pretty tall Man leading a Body of the Mob through the Fields; about the Middle they made a Halt, and became a bigger Number; we walked ſoftly to meet them: I kept my Eye on the tall Man, which proved to be *Dammaree:* Some of them were for going up *Queen-Street*, and ſome were for going through the Arch. When they came near the Corner, he ſtruck ſhort off, and went over the Rails juſt under the Wall, about the middle Way between *Powis* Houſe and the Arch, and there they called a Council: Says I, There is a Council of Mob; there I ſaw *Dammaree*. Said they, Where ſhall we go to now? To *Drury-Lane*, or *Wild-Street?* No, ſaid ſome, to *Drury-Lane*, huzza! *Wild-Street* is a Hen-Rooſt, the other is worth ten of it. *Dammaree* hallooed, Come along, Boys, we will have them all down, and they carried it by the Majority. I went under the Piazzas at *Powis* Houſe, into *Queen-Street:* When he was in *Queen-Street*, he made ten or twelve Halts, and turned about, Huzza! High-Church and *Sacheverel!* God damn all his Enemies; we will have all the Meetings down to-night; follow me; Why don't you come along? And this he many times repeated; and thus he headed them 'till he came to *Drury-Lane*; there ſome of the Boys ran to find the Meeting-Houſe Door, but they miſſed the Door, and went to ſome of the Neighbours Houſes; but they ſoon found out the Door, and there came a little Fellow, with a Pick-Ax, to break down the Door. A Woman that belonged to the Place came crying, that her Siſter was in the Houſe, and would be killed: Do not be afraid, Miſtreſs, ſaid I, I will endeavour to pacify them, if I can: But at laſt came another Man with a Hatchet, and ſtruck through the Door the ſecond or third Time. God damn you, ſays he, don't you know how to break down a Meeting-Houſe Door? That Fellow cannot be found. I went in with them, and there I was aſſaulted by a Soldier; and when I was there, they would have me go up Stairs with them. Pray, ſays I, don't go up, there is only a poor Woman's Room, that belongs to the Place. What will it ſignify, if you ſhould burn an old Bedſtead? God damn you, ſays he, are you againſt *Sacheverel?* Says I, I have the Queen's Commiſſion: Upon that he cries out, The Church, the Church; God damn you, you ſhall go up. That Man, I ſuppoſe, was a Soldier; he was in a looped Waiſtcoat and white Stockings. I went up with them, and it proved to be Mr. *Earl*'s own Lodging; and there they took up a great many Papers, Manuſcripts, which I ſuppoſe might be Notes. As ſoon as I came out, I ſaw the Clock and the Cuſhion thrown down into the Kennel, in *Drury-Lane*; and they were the two firſt Things that were brought out, as I obſerved. I aſked, indeed, Why they began to complain, and give me ill Language? Says I, Where is *Jolly*, the Waterman? Oh damn you, ſays one, he is gone with a Party to St. *James*'s: Another ſaid, he was gone to my Lord *Wharton*'s; and others ſaid, he was gone to the Back-Door to break it open; but I ſaw him no more after that. When I came out, I went to the Man that keeps the *Griffin* and *Parrot*, and told him, I was ſorry to ſee theſe Things; and my Friend went to his Brother's Houſe, which was hard by. After my Friend was come again, Well, ſaid I, I will go into the City, to *Leonard*'s Coffee-Houſe, and give an Account to our Friends of what has happened, for they will ſtay for us, and will not go to Bed, if I don't go back to Night. We agreed to go home; but my Friend aſked, Where was the Meeting-Houſe in *Wild-Street?* Says I, I know *Wild-Street*; ſays he, I believe it was the old Maſs-Houſe: So we went through *Wild-Street*; and as we came to the Arch, we met a Detachment of the Guard coming on a full Trot. Says I, Gentlemen, pray make Haſte, they are pulling down the Meeting in *Drury-Lane*. I put out my Hand to the Captain, This is the beſt Way, ſaid I, through *Wild-Street:* And another Detachment went another Way. As ſoon as they came (I was near the Officer), he commanded them to file off, and diſperſe the Mob; and they rode among them to diſperſe them. While I was there, I ſaw a Man with his Sword drawn, near the *Griffin* and *Parrot*, who was the Priſoner at the Bar: I went over the Way, and ſpoke to him.

Purchaſe. What Time of Night was this?

Orrel. It was about half an Hour after Eleven. Several of the Horſe rode up to him, and then he retired under the Bulk, and puſhed with his Sword at ſeveral of them; and ſome of them ſtruck at him with the Flats of their Swords. Says I to my Friend, I wonder they don't cut him to Pieces. I went to him; Pray, ſays I, what are you doing? Pray go home. He turned his Back, and I thought he had been gone. In a Minute's Time, the Guards had rode round the Fire, and diſperſed the Mob a little: In a Minute or two, I ſaw the Priſoner with his Sword drawn, hallooing and flouriſhing his Sword in the Middle of the Street, juſt by the Kennel in *Drury-Lane*, and fronting the Guards. I came to him, and laid my Hands upon him, and puſhed him back, What are you doing? Two Foot-Soldiers came to me, and ſaid, What do you do? He is drunk; he is an honeſt Gentleman: Says I, Take him away then, if he is your Friend. Says I to him, Do you know what you do, in oppoſing the Guards? You oppoſe the Queen's Perſon. Says he, God damn you, are you againſt *Sacheverel?* I am for High-Church; I will be for High-Church and *Sacheverel*; I will loſe my Life in the Cauſe; and this many Times repeated. I went over the Way, and he advanced with his Sword, and run at the Officer, juſt at the left Flank; At that, I ſaw a Gentleman's Horſe ſpring forward, and he ſtruck his Sword down. I went back, thinking there would then be firing, and I might be killed.

L. C. J. Pray repeat the Words again, which he ſpoke to you, when you told him, that reſiſting the Guards was oppoſing the Queen.

Orrel.

Orrel. I ſaid, Sir, (I thought he was ſome Country Gentleman, and that he was in Drink) Do you know what you do in oppoſing the Guards? You oppoſe the Queen's Perſon; I ſpoke it heartily and in Friendſhip, I had my Hand on his Breaſt, and he had his Sword in his Hand; ſays he, God damn you, are you againſt *Sacheverel?* I am for High-Church and *Sacheverel*, God damn all his Enemies; I will loſe my Life in the Cauſe; I will fight the beſt of them; and advanced and huzza'd; Boys, I will lead you on for High-Church and *Sacheverel*. After this was over, as I obſerved, he run at the Officer: if he had touched him, I believe he would have run him through the left Flank. One of the Gentlemen of the Guards, I ſaw his Horſe ſpring forward; he reached over his Horſe, and ſtruck at the Priſoner's Sword; and then I retired, and went lower into the Lane; for I thought if there was firing I ſhould be in Danger.

Mr. Sol. Gen. Before you go from this Place, where he flouriſhed his Sword, let me aſk you, Did he advance towards the Guards, or did they advance towards him?

Orrel. As ſoon as that Gentleman had ſprung forward, and ſtruck at his Sword, he endeavoured to ſhelter himſelf under the Bulk, and one or two of them rode up to him.

Mr. Sol. Gen. Did he retire under the Bulk, after he had paſſed on the Officer?

Orrel. This was a ſecond Time, when he paſſed at the Officer: he paſſed at the Grenadiers before, but theſe were the Life-Guards.

Mr. Sol. Gen. You ſay he run at the Officer?

Orrel. As I run over the Way to him, he ſaid, God damn them, he would loſe his Life for the Cauſe; he was for High-Church and *Sacheverel*; Damn all his Enemies, he would fight the beſt of them. Come, Boys, fall on, I will lead you on; and flouriſhed his Sword over his Head, and went directly at the Officer, and made a Puſh at him, but his Sword was beat down.

Mr. Sol. Gen. Now go on.

Orrel. After this I retired, I never ſtaid to ſee what was done with him; I thought they had either killed him, or confined him: I thought there was like to be an Engagement between the Mob and the Guards, ſo I retired down the Lane, and there I met with a Clergyman at a Tavern Door, and I ſtood and talked with him, till the Foot-Guards came by; ſays I, Captain, the Mob is very ſtrong, I wiſh you good Succeſs. As the Mob went by, they cry'd, Damn them, we will be even with them To-morrow Night, they dare not fire upon us.

Mr. Att. Gen. If you will aſk him any Queſtions you may.

Mr. *Darnell.* You ſay, that at firſt, when you ſaw the Priſoner, he retired under a Bulk?

Orrel. My Lord, the Horſe rode among the Mob. When I ſaw the Priſoner firſt, I was on a Bench at the Pewterer's Corner; and I ſaw him on the other Side the Way; and when the Horſes came up, I ſaw him under the Bulk, with his Sword, and I ſaw him flouriſh his Sword, and hallcoe.

Mr. *Darnell.* Was that before the Guards came up to him?

Orrel. The firſt Time that I ſet my Eyes on him he had his Sword in his Hand.

Mr. *Darnell.* Therefore I aſk, Whether you ſaw him before you ſaw him under the Bulk?

Orrel. I don't know what you mean by under the Bulk.

L. C. J. I underſtood him, that when the Horſe came up, he retired under the Bulk.

Orrel. When I firſt ſaw him, he was near the Houſes, and he had his Sword then drawn; I had no Sight of him till his Sword was drawn; afterwards I run croſs to him, and being ſorry to ſee him ſo deſperate, I ſpoke to him.

Mr. *Darnell.* I aſk, if you ſaw him do any Thing before he was under the Bulk?

Orrel. He had his Sword in his Hand, and hallooed, and flouriſhed his Sword.

Mr. *Darnell.* Did he do any Thing before they rode up to him?

Orrel. I ſaw him with his Sword in his Hand, when he was before the Bulk: What I call under the Bulk, is againſt the Bulk.

Mr. *Darnell.* Now I aſk, Was he not on the Ground, when you ſay he was under the Bulk?

Orrel. He was upon his Legs, upon the Ground: He ſtood upon his Legs, as I do now; and when the Guards rode up, he went back againſt the Bulk.

Mr. *Darnell.* Did the Guards ride near him?

Orrel. Yes, I ſaw one or two of them ſtrike him.

Mr. *Darnell.* What did he do when they came up to him?

Orrel. He puſhed, or rather poked at their Horſes.

Mr. *Darnell.* Now where is the ſecond Place that you ſaw him?

Orrel. I perſuaded him to go Home; but I ſaw him the ſecond Time at the End of *Long-Acre*.

Mr. *Darnell.* How far was that from the firſt Place?

Orrel. About the Breadth of this Court.

Mr. *Darnell.* Did you not apprehend him to be mad, or very drunk?

Orrel. I believe he had been drinking hard.

Mr. *Major.* Did you obſerve which Way he was coming, when you firſt ſaw him?---*Orrel.* He was ſtanding ſtill.

Mr. *Major.* Did you ſee him among the Mob?

Orrel. The Mob was then as thick as could be; for when the Guards rode among them, they divided of both Sides the Street, and were all about him.

Mr. *Major.* Which Side of the Street was you of, when you firſt ſaw him?

Orrel. When I firſt ſaw him, I was upon a Bench, on the Pewterer's Side; I ſaw him firſt on the other Side of the Way, by the *Griffin* and *Parrot*, and then run over to him, and deſired him to go Home. Two Foot-Soldiers ſaid, he was an honeſt Gentleman; then pray, ſaid I, take him Home.

Mr. *Darnell.* When you ſay he was offering to puſh at the Officer, was the Mob diſperſed?

Orrel. As ſoon as the Guards came up to them, they would run back forty or fifty Yards; and as ſoon as ever their Backs were turned, they got together again.

Mr *Darnell.* When he made the Puſh at the Officer, were they not diſperſed?

Orrel. They were drove into ſmaller Bodies, of fifty or one hundred together, and filled all the Doors and Bulks.

Mr. *Darnell.* Did the Priſoner go with them, or ſtay?

Orrel. After the Guards had firſt rode round the Fire, I loſt him for a Minute or two, till I had turned about, and was looking for my Friend; and then I ſaw the Priſoner with his Sword drawn, in the Middle of the Kennel-way, at the End of *Long-Acre*, fronting the Bonfire, and there I went and ſpoke to him, as I told you before.

Mr. Baron *Bury.* Was any body with him then?

Orrel. There was a pretty many Boys, and Mob getting together: The Mob was thick of both Sides of the Way, and on the Bulks; and as ſoon as he appeared with his Sword drawn, they gathered together very thick.

Mr. Sol. Gen. Pray deſcribe whereabout is the *Griffin* and *Parrot*; it may be material by and bye. You ſay the Pewterer's Shop is the Corner of *Queen-Street*, now where is the *Griffin* and *Parrot?*

Orrel. Juſt over-againſt it.

Mr. Att. Gen. How many do you compute were got there together, when you came there firſt?

Orrel. I cannot tell; the Lane was ſo thick from the Meeting-Houſe-Door to the End of *Long-Acre*, that one could not croſs the Way without crowding: There might be two, or three, or four Thouſand.

Mr. *Major.* Did you obſerve a Watchman that was near him at any Time?

Orrel. There were ſeveral of them in Parties.

Mr. *Major.* Did you obſerve any Thing ſaid by any of the Guards to any Watchman?

Orrel. Not to any in particular.

Then Richard Ruſſel *was ſworn.*

Mr. Att. Gen. Look upon the Priſoner, and give us an Account whether you know him; and what you can ſay of his being among the Mob?

Ruſſel. I was commanded to go with my Serjeant into *Drury-Lane*; I am one of the Horſe-Grenadiers: When we came into *Drury-Lane*, we were commanded to return our Bayonets, and draw our Swords; and when we were drawn round the Fire, over-againſt *Queen-ſtreet* End, this Gentleman, the Priſoner, came down the Lane, with his naked Sword, huzzaing, and flouriſhing it over his Head; with that another Soldier and I ſtruck at him; he got between us, and made ſeveral Puſhes, and then we were commanded on the other Side the Way; and then, I ſuppoſe, he fell into the Serjeant's Hands.

Mr. Sol. Gen. Did you know him before that Time?

Ruſſel. I knew him when he rode in the firſt Troop of Guards.

Mr. Sol. Gen. Then he has been a Soldier?---*Ruſſel.* Yes.

Mr. Sol. Gen. Are you ſure this is the Man?

Ruſſel. This is the Man that drew his Sword, and made ſeveral Puſhes.

Mr. Sol. Gen. Was he at the Head of the Mob?

Ruſſel. He came down at the Head of them, and ſwore, God damn you, Are you for Low-Church, or High-Church and *Sacheverel?* I am for *Sacheverel.*

Mr. Sol. Gen. This, you ſay, he ſaid at the Head of the Mob?

Ruſſel. Yes.

Mr. Att. Gen. Did you ſee him at any Time after this?

Ruſſel. I ſaw him ſeveral Times, but did not come near him.

Mr. Sol. Gen. Are you ſure this is the Man?---*Ruſſel.* Yes.

Mr. Sol. Gen. You knew him before?---*Ruſſel.* Yes.

Mr. *Major.* You ſay you had drawn round the Fire: Was there any Oppoſition? Or did the Mob diſperſe themſelves?

Ruſſel. They were very tedious; and as we diſperſed them one Way, they drew together in another Place. Afterwards we were commanded to draw into a Line, and to draw back our Horſes that Nobody might get behind us. I drew back into a Door-Way, and he was got behind, by the firſt Horſe, between our Horſes, and then we ſtruck at him.

Mr. Sol. Gen. Did the reſt of the Mob endeavour to follow him?

Ruſſel. The reſt were more afraid, and kept off; but he ſwore, Damn him, he would come.

Mr. Sol. Gen. How did you ſtrike him?

Ruſſel. With the Flat of the Sword.

Then Southerland *was ſworn.*

Mr. Att. Gen. I think you are the Officer that commanded that Party of Grenadiers; look upon the Priſoner, and tell us if you know him.

Southerland. I never ſaw him before that Night; but I am confident that is the Man that had his Sword in his Hand, for I ſaw him ſeveral Times that Night.

Mr. Att. Gen. Now pray, what did you ſee him do?

Southerland. I was commanded by the Colonel of Foot to go to *Lincoln's-Inn-Fields*; accordingly I went with a Party of Grenadiers, and diſperſed the Mob there: When I had done that, I came back to the Horſe-Guards in *Drury-Lane:* I drew them up in a Line, and gave them Orders to let none paſs behind them, or before them, and then I rode down to Captain *Horſy*, for Commands; (for when we had joined the Horſe, I was under his Command:) As I came back, I ſaw *Purchaſe* flouriſhing his Sword, and crying out, *Sacheverel, Sacheverel!* I rode up to him; ſays I, Are you encouraging the Mob? Damn you, ſays he, I am for *Sacheverel*; with that I raiſed my Hand, and he drew back, and offered his Point, but did not thruſt. Says I, You are mad, you are diſtracted; go to your Lodgings: Says he, I am one of the Life-Guard: He ſaid he was one, or had been one: Says I, the more Shame for you to be here. I ſtruck at him, and he run back towards the Horſe-Guards. I rode down again to Captain *Horſy*, and I ſaw him again at the Corner of *Long-Acre* in the ſame Manner. Seeing him there again, ſays I to Captain *Horſy*, This Man has been troubleſome to me on my Poſt: Says he, Make up to him, and cut him to Pieces: As I rode to him, he got into *Long-Acre*, and I ſaw no more of him.

Mr. Sol. Gen. You ſay he offered his Point to you; Did you ſee him do ſo to any other?

Southerland. No; I ſaw him offer no Violence.

Mr. Darnell. Was there any Mob at the Corner of *Long-Acre* with him?

Southerland. There was a Party of them, and the Horſe-Guards were diſperſing them.

Mr. *Major.* When you rode up to him, and he went from you, Was there any body with him?

Southerland.

Southerland. I can't be poſitive of that.

Mr. *Major.* Did you obſerve him poke at any Horſes?

Southerland. No; I ſaw no ſuch Thing.

Then George Richardſon *was ſworn.*

Mr. Att. Gen. What Troop of Guards are you of?

Richardſon. The third Troop.

Mr. Att. Gen. Look on the Priſoner, and tell us whether you remember him.

Richardſon. I know him well, for we were abroad together in *Flanders:* He was in the Firſt Troop of Guards when I was in the Third.

Mr. Att. Gen. Now did you ſee him among the Mob the Firſt of *March* at Night?

Richardſon. I was upon the Guard that Night, and ſomething after Ten an Alarm came to us, that the Mob was up: We were ordered immediately to mount, and ſtaid ſome Time till the Foot paſſed us at *Whitehall.* When we came near *Lincoln's-Inn-Fields*, we left the Foot, and made to *Drury-Lane*; when we came there, the Officer commanded us to file off, and diſperſe the Mob, which we did. I was riding among the reſt, for they filed off; not four together, but ſingly, and when I came back again towards the Fire, I ſaw there Mr. *Purchaſe*, and my Officer, Captain *Hensbrough*, was talking to him; what he ſaid, I don't know, but as he paſſed him, *Purchaſe* made a Thruſt at him, but I beat down his Point.

Mr. Att. Gen. Who did he thruſt at?

Richardſon. My Officer, Captain *Hensbrough.*

Mr. Att. Gen. Where is he?---*Richardſon.* In the Country.

Mr. Att. Gen. Then you ſay you beat down his Point.

Richardſon. I went to cut at him; ſays I, You Raſcal, have you a mind to kill my Officer? I went to cut at him, and he threw himſelf againſt a Bulk, and I hit the Penthouſe with my Point, and my Blade broke to Pieces.

Mr. *Darnell.* You ſay you ſaw him talking with the Captain; Had he his Sword drawn at that Time?---*Richardſon.* Yes.

Mr. *Darnell.* Were there any Mob about him then?

Richardſon. They were very thick about us of every Side; we were diſperſing them as well as we could.

L. C. J. Did the Priſoner know Captain *Hensbrough?*

Richardſon. I believe he did: for he was abroad with us at the ſame Time when Captain *Hensbrough* was there.

Mr. Att. Gen. My Lord, we have done with our Evidence.

Mr. *Darnell.* I am of Counſel with the Priſoner. And, my Lord, I ſhall make no Diſpute, but, as the Gentlemen on the other Side ſay, there was a great tumultuous Aſſembly, that was gathered together with an Intention to pull down the Meeting-Houſes: And I ſhall make no Diſpute but it was High-Treaſon in all that were guilty of that Intention, or aſſiſted thoſe that were ſo. But on the other Side, we muſt beg Leave to ſay, that any Perſon that was going along the Street, and fell into Company of thoſe that had that Deſign, though they might uſe ſome Expreſſions which were Evidences of the Intention; yet if they were not in the Intention, nor did any thing that was aſſiſting in the Execution of it, they will not be guilty of High-Treaſon.

They have offered Evidence to ſhew there was ſuch an Intention. The firſt Witneſs is only to ſhew, there was a general Intention. And I muſt take Notice, that what he ſays does not ſhew ſuch a general Intention as is neceſſary to make this Fact High-Treaſon: For he ſays, as he went through the *Temple*, he heard ſome People ſay, they would go and pull down *Burgeſs*'s Meeting-Houſe; others oppoſed it: Some were for going that Night, and others for deferring it till the Trial was over. Now if they came to no other Reſolution, than that ſome were for going that Night, and others after the Trial was over; then the Action which happened the next Night, and before the Trial was over, could not be an Execution of that Intention; nor can they ſay that any one of thoſe that were at the *Temple* was at this Execution. And therefore, if there be no other Evidence to ſhew a general Intent, then this Action will ſtand without any previous Intent, and only be a ſudden Execution of a Deſign.

The firſt Witneſs to the Fact is *Orrel:* And I muſt beg Leave to take Notice of the Introduction to his Evidence, which he would make uſe of as a Reflection on the Priſoner; but I believe the Gentlemen of the Jury will not think that he had any Hand in it. There may be wicked People enough to ſay ſuch Things: and no doubt *Mr. Attorney* will take care that they ſhall be proſecuted according to their Deſerts. And I would take this Opportunity to ſay, that I don't ſee but he is free from any ſuch Charge. I ſee no Inconſiſtency between his Evidence, and that which was given for the Priſoner. But as to that Suggeſtion, that the Priſoner's Wife has been about in his Neighbourhood, I don't ſee any thing of that proved.

As to the Fact, he ſays, he came up *Drury-Lane* half an Hour paſt Eleven; that there he ſaw the Priſoner from the other Side the Way, with his Sword drawn; that he was hallooing and waving his Sword; that the Guards coming up, he retired toward the Bulk; and that he puſhed at the Guards. The next Place he ſaw him at was a little from thence amongſt the Horſe-Guards; there he was waving his Sword, and crying, Damn all *Sacheverel*'s Enemies; I will fight them all; I will loſe my Life in the Cauſe: Come on, Boys; and to that Purpoſe: And that he did puſh at the Captain of the Guards. I think theſe Expreſſions carry a Face of Madneſs, or great Drunkenneſs; nobody in his right Senſes would think himſelf fit to fight all his Enemies, and call to them to fall on, when at the ſame time he ſtood ſingle, and there were none to fall on.

L. C. J. He did not ſay there were none: He ſaid they were not diſperſed.

Mr. *Darnell.* I aſked whether any body was near the Priſoner when he uſed that Expreſſion; he ſaid they were divided.

L. C. J. Call him again, and ſee if he ſaid ſo. What ſay you, Did he ſtand ſingle and alone, and all the reſt at a Diſtance?

Orrel. No; I ſaw him at the Head of a ſmaller Body juſt at the Kennel in *Long-Acre:* I went and ſpoke to him, and puſhed him back; and then there was a greater Number.

Mr. *Darnell.* I aſk, When he puſhed at the Captain, was there any body cloſe to him?

Orrel. There were ſome before him; but they did not keep ſo cloſe to him.

L. C. J. Where was it that you ſay he called to them to fall on?

Orrel. At the End of *Long-Acre.*

L. C. J. Now were there any others coming up, or following him?

Orrel. A great many were cloſe to him then; but he advanced farther than they would follow him.

Mr. *Darnell.* My Lord, I ſay, this Expreſſion did ſpeak a Madman, or a Man out of his Senſes in Drink; but the Subſtance of what he ſaid was only, That he was for *Sacheverel*, and would die in the Cauſe. *Ruſſel*, one of the Horſe-Grenadiers, ſays, he ſaw him there with his Sword; and that he got in behind, and was between the Horſes: So that he muſt come in among the Horſes by Accident; if he had been reſiſting the Guards, doubtleſs he would have been at the Head of them, and not have got in between them: So that he could not be then reſiſting them, but come there for Shelter, rather than to reſiſt them. The third is *Southerland:* He ſays, he ſaw the Priſoner hallooing for *Sacheverel*, and in a little time loſt Sight of him, and ſaw him afterwards at the End of *Long-Acre*; and that Nobody was then with him. *Richardſon* ſays he knows him, and ſaw him talk to the Captain of the Guards; and it would have been proper to have produced the Captain, to give an Account what paſſed between them, to know whether he was encouraging the Mob, or defending the Guards. The Diſcourſe that paſſed between them, we think, would have been material: But we think it is an Evidence for us that it was not what is repreſented; for if it had been ſuch a Diſcourſe, the Captain would have ordered him to be ſecured: Therefore we think it looks as if the Captain did not take him to be concerned in the Matter. They do not pretend to ſhew that he was at any of the Meeting-Houſes; that he was inſtrumental in pulling them down; that he had any Part of the Materials; that he had any Enſigns or Banners: But the firſt Account they give of him was about Half an Hour after Eleven; and then moſt, if not all the Miſchief was over: So that all they can ſay is, That he came in at the latter End of it.

As to our Caſe, we will ſhew that the Priſoner is in his Employment a Bailiff; at the Time that is mentioned, we have a good Account to give of him all the Day long: In the Morning about Nine, he had Buſineſs to arreſt one, and ſent for one *Amos Winch*, to fetch a Marſhal's Court Writ to arreſt the Man in *Hatton-Garden:* About Eleven the Plaintiff and Defendant met together at the Crown in *Chancery-Lane*, to end that Matter: At Twelve he went from thence to the *Savoy*; after that he went to one *Grove*'s, that keeps a Brandy-Shop; and thoſe of his Employment give themſelves a great Liberty in drinking; and there he ſtaid a-while. From thence he went to the *Horſe-Shoe* Tavern; and then returned to the Brandy-Shop again. About Nine he went to his own Houſe; when he came thither, there was other Buſineſs required him to go abroad; for Mr. *Broad* the Bailiff had ſent for him to the —— Tavern in *Covent Garden*; and there he ſtaid till Eleven. He was ſo much in Drink, that as he was going home to Bed, he was met in the Street, and offered a Chair: But before he got into the Chair, the Mob were got together; and they ſeeing him ſo much in Drink, made Sport with him; and he did expreſs himſelf for *Sacheverel*, as every body was forced to do. After they had uſed him thus, they put him into a Chair, and carried him home. He was in ſo ſad a Condition with Drink, that it was apprehended he would have died; his Wife and thoſe about him were forced to ſend for a Phyſician; accordingly they ſent for one *Plaxton*, and he let him Blood; which was done before Twelve o'Clock: And he continued thus ill all the next Day. This will ſhew that he was not in the original Intention; that he came accidentally at Eleven, or half an Hour after; and then the whole Tranſaction was over. And however he might behave himſelf through that Exceſs of Drink, yet they muſt offer ſome Evidence that he was in the Intention or Execution of that Deſign; for the Aſſault made on the Guards is barely an Aſſault, and can't be High-Treaſon. If he did no more when he met the Guards, but draw his Sword to defend himſelf againſt the Horſes that were coming ſo near him; if he did retire, and only puſh at the Horſes, that will be no Manner of Offence; if he did miſbehave himſelf, by Reaſon of the Exceſs of Drink, and offer to puſh at a Man, if he had killed him, it had been Murder; but it could not have been High-Treaſon. When we have proved our Caſe, we will leave it to your Lordſhip and the Jury, and hope there will be no Evidence to convict us.

L. C. J. I would aſk where that Captain is?

Richardſon. He is in the Country: He married a young Lady lately, and is gone into the Country.

L. C. J. When did you ſee him?

Richardſon. Not this Fortnight.

Mr. *Major.* My Lord, the Offence which the Priſoner ſtands charged with is a great Offence, no leſs than High-Treaſon, in levying War againſt her Majeſty; the Puniſhment, if guilty, will be the moſt ſevere; therefore we hope the Gentlemen of the Jury will expect plain, poſitive and direct Proof, and will not be guided by private Opinion, Preſumption or Probability. My Lord, I beg Leave to conſider how far the Evidence given will affect the Priſoner, as to the Crime he is charged with. The Treaſon they have given Evidence of is an Intent to pull down Meeting-Houſes in general: It is not pretended that the Priſoner was concerned in that, or was at any of the Meeting-Houſes; but only they would prove him guilty, by aiding and aſſiſting thoſe Perſons that were concerned in that Fact. Now it will not be pretended, that all that were preſent where thoſe Mobs were, are guilty of this Crime: Many were there out of Curioſity, many by Accident, many paſſing along on their Occaſions; which we ſay was the Caſe of the Priſoner: It cannot be imagined that thoſe Perſons that appeared there ſingle were engaged in the Deſign. We ſay, There was no Reſiſtance made by him to the Guards; that he ſeconded nobody, nor did any body ſecond him: And when he came to the Guards, if he had appeared to be a Leader of the Mob, he was then in their Power, and they might have ſecured him. One of the Officers of the Guards ſpoke to him,

but what paſſed don't appear. If this Fact had happened at any other Place where he had happened to meet the Guards, and he had aſſaulted them; that Fact in itſelf conſidered, would not have amounted to High-Treaſon. As to the Place, that it was near where the Mob was gathered tog ther, that will be accounted for, becauſe it was in his Way home, and near the Plac e where he lived. They take Notice of ſeveral Expreſſions he made uſe of at that Time: of offering to fight the Guards, and damning *Sacheverel*'s Enemies, and the like; we think theſe are ſuch Expreſſions as might be expected from a drunken Man, a Man in the Condition he was in; and it don't appear to be in Aid and Aſſiſtance of that Fact, which thoſe tumultuous Perſons were about. It don't appear that he was privy to it, and the Matter was over before he came. We ſhall give an Account of his coming to the Place where the Guards were; that he was not among the People, but coming in his Way home. And if it appears not to be done in Aid of that traitorous Deſign, and of thoſe Perſons that were concerned in it, it will not be Treaſon: For a Man to be ſingly flouriſhing his Sword when he was in the Power of the Guards, it ſhews the Action of a Man not in his Senſes; and that is a more probable Account of the Matter, than that he did it in Aid of thoſe traitorous Perſons. So that if that be only doubtful, and the Fact is not levying War; if it be only doubtful, and is capable of being conſtrued the one way or the other; yet in the Caſe of Life the Jury will, in favour of Life, incline rather to acquit than condemn. We will call our Witneſſes, and hope to give you Satisfaction that he is not guilty of this Crime.

Then Amos Winch *was ſworn.*

Mr. *Darnell.* Give an Account to my Lord, and the Jury, Whether you remember Mr. *Purchaſe* any where, the Firſt of *March* laſt? And when you ſaw him firſt?

Winch. He call'd on me, between Eight and Nine in the Morning, to go with him, to execute a Writ: I went with him, and we took the Perſon.

L. C. J. I will not hinder you from taking your own Method, if you think it will be of any Uſe to ſhew where he was all Day.

Mr. *Darnell.* It may be inferr'd from that Evidence, that he was not concern'd in the Deſign.

L. C. J. Then you would make uſe of it to ſhew, that he was not in the Deſign all the Day, but to make his coming there accidental? I don't find that the Queen's Counſel ſay he was at any Conſultation.

Mr. *Darnell.* Pray give an Account, when he firſt came to you, and when you parted.

Winch. He came to me in *Sheer-Lane*, to go with him to execute a Writ; and it was between Eleven and Twelve when they paid the Money, and then he went away with the Plaintiff.

Mr. Att. Gen. Are you acquainted with the Priſoner?

Winch. Yes; very well.

Mr. Att. Gen. What Profeſſion is he of?

Winch. He is an Officer to the High Bailiff of *Weſtminſter*.

Mr. Att. Gen. Who is he an Officer to?---*Winch.* To Mr. *Huggins.*

Then Cornelius Johnſon *was ſworn.*

Mr. *Darnell.* What Time of Day did you ſee *Purchaſe* upon the Firſt of *March* laſt?---*Johnſon.* I was with him between Eleven and Twelve, at the *Crown* in *Chancery-Lane.*

Mr. *Darnell.* How long did you ſtay?---*Johnſon.* From thence we went into the *Strand*, and I parted with him at the *Savoy.*

Mr. *Darnell.* What Time of Day?

Johnſon. About half an Hour after Eleven.

Mr. *Darnell.* Who was he going to at the *Savoy?*

Johnſon. I don't know to whom.

Then Benjamin Holden *was ſworn.*

Mr. *Darnell.* Pray give an Account what Time you was with the Priſoner on the Firſt of *March* laſt.

Holden. Mr. *Johnſon* was going towards *Whitehall*, ſo we went all three together; and Mr. *Purchaſe* called on one that owed him ſome Money, but he was not at home; but, ſays he, I will find him out; but he did not meet the Man, ſo we went to drink a Pint of Wine, and we agreed to dine together, at Two o'Clock, in *Chancery-Lane*, which we did; and after Dinner, ſays I to *Purchaſe*, Here is a ſad Noiſe and Rout, no Buſineſs is to be done, let us ſit, and ſmoke a Pipe; ſo we ſate 'till Four o'Clock. Says I, Where are you going? I am going home, ſays he; but inſtead of that, he went to *Grove*'s Brandy-Shop, at *Long-Acre*; there he went and drank.

L. C. J. Did you go with him?

Holden. No; but he ſaid he would go there.

L. C J. How do you know what he drank?

Holden. Grove's Man told me ſo.

L. C. J. What time did you meet him again after you had parted with him going to *Whitehall?*---*Holden.* It was about Two.

L. C. J. And what time did you part with him to go there?

Holden. It was nigh Twelve o'Clock.

Mr. Att. Gen. About Four, you ſay, you aſked him to ſmoke a Pipe; What did you ſay to him?

Holden. Says I, There is a great Noiſe about, there is no doing Buſineſs.

Mr. Att. Gen. What did you mean by that great Noiſe?—*Holden.* I meant about Dr. *Sacheverel*; there was a great Noiſe about the *Temple.*

Mr. Att. Gen. Was the Mob up then?---*Holden.* No.

Mr. Att. Gen. But he would not ſtay with you?

Holden. No, he ſaid he would go home.

Then John Lane *was ſworn.*

Mr. *Darnell.* Do you live at *Grove*'s?---*Lane.* Yes.

Mr. *Darnell.* What time of Day did *Purchaſe* come to your Houſe?

Lane. A little before Four o'Clock; and he drank with my Maſter till paſt Five. My Maſter gave him a Buſineſs to dun a Gentleman, and then they went to the *Horſe-Shoe* Tavern and ſtaid there till Eight; then he came back again, and drank with us, and was very drunk.

L. C. J. When he went to the Tavern, how long did he ſtay there?

Lane. Two Hours.

L. C. J. How do you know?

Lane. I am ſure of it; the Man of the Houſe will witneſs it.

Mr. *Darnell.* How long did he ſtay at your Houſe?

Lane. He ſtaid there, and about the Door, till half an Hour after Eight.

Mr. *Darnell.* Where did he go then?

Lane. He went homewards, I ſuppoſe.

L. C. J. What did he do about the Door?

Lane. He went to the Door, and drank there with ſome Men.

L. C. J. Who were they?

Lane. One *Acton*, and *Gering*, two Officers.

Then Dupper *was ſworn.*

Mr. *Darnell.* Do you remember that the Priſoner came to your Houſe the Firſt of *March* laſt, with Mr. *Grove?*---*Dupper.* Yes.

Mr. *Darnell.* How long did he ſtay?

Dupper. I believe he was there about two Hours.

Mr. *Darnell.* What time did they come in?

Dupper. In my Opinion, it was about Five or Six o'Clock.

Mr. *Darnell.* How long did they ſtay?---*Dupper.* They went away a little before Eight, to the beſt of my Knowledge.

Mr. *Darnell.* Were they there all that while?

Dupper. Yes, they were, upon my Oath.

Mr. *Darnell.* Did the Priſoner and *Grove* go away together?

Dupper. Upon my Oath, they did.

L. C. J. What time did the Mob begin that Night?

Dupper. I did not mind.

Then Sarah Roch *was ſworn.*

Mr. *Darnell.* Did you ſee the Priſoner at Mr. *Grove*'s?

Roch. I was at Mr. *Grove*'s, when Mr. *Purchaſe* and he came back from the Tavern: I ſaw him in Drink, and deſired him to go home. I was half an Hour in the Shop; when he was there, he was very much in Drink, and at laſt he went home along with me. When he came home, he ſent for two Pots of Ale, and was at home half an Hour, and there came a Porter from a Tavern in *Covent-Garden*, to let him know ſomebody wanted him there, and he took Coach to go there.

Mr. *Darnell.* What Time was that?

Roch. It was about half an Hour after Nine.

Mr. *Darnell.* You ſay he went in a Coach, Was he in Drink then?

Roch. Yes.

Mr. *Darnell.* Did any body go with him?---*Roch.* Yes, Mr. *Loveday.*

Mr. *Darnell.* Why did he go with him?

Roch. His Wife deſired Mr. *Loveday* to go along with him, becauſe he was ſo much in Drink, and to bring him home again.

Then Thomas Loveday *was ſworn.*

Mr. *Darnell.* Give us an Account when you ſaw the Priſoner that Night.

Loveday. I went home with him about Nine o'Clock, and he ſent for two Pots of Drink, and while we were drinking them, Mr. *Broad* ſent for him to a Tavern in *Covent-Garden.* His Wife, at firſt, would not have had him go, but I ſaid, It may be Mr. *Broad* had Buſineſs with him; ſo ſhe deſired me to call a Coach, and to go with him, and to ſee if Mr. *Broad* was there; ſo I went with him to the Tavern, and left him there, and came home.

Then Jacob Broad *was ſworn.*

Mr. *Darnell.* Did you ſend for the Priſoner that Night that the Mob was?

Broad. I have known him ſome Years: I happened to have occaſion to have ſome Goods appraiſed, which I had taken in Execution: I ſent for Mr. *Averell* and Mr. *Holloway* to appraiſe them; and when they had appraiſed them, I deſired them to go to ſome Houſe, and give me an Inventory; then we agreed to go to the *Croſs-Keys* Tavern; this was about half an Hour after Seven. I left them there, making up their Inventory, and went to a Coffee-Houſe hard by: There I heard of a Gentleman, that was to be in that Tavern, whom I had a Warrant againſt for two Hundred Pounds: I had Nobody with me; I went to the Tavern, and then it was half an Hour after Eight; ſays I, I have Nobody with me; I will ſend for *Purchaſe:* He came to me in a Coach, much in Drink; ſays I, What do you come to me for, fuddled? You are not fit to go about Buſineſs: I will not go again, ſays he, unleſs you will give me a Coach, and a Pint of Wine. I ſaid, it was needleſs, I had rather give him a Bottle another Time; but I did give him a Pint, and he ſtaid 'till between Nine and Ten. Mr. *Averell* had occaſion to go away, and he left the reſt of us. He was much in Drink, and I could not get him out of the Room. When he is ſober, he is a very civil Fellow, but when he is drunk, he is quite mad. About Ten, I took my Leave of *Holloway*, and went over *Covent-Garden* with him; he hung upon me, and was very troubleſome. I bid him take a Coach; ſays he, It is a mobbing Night, I will ſee you home: Says I, You ſhall not ſee me home: Says he, I will call a Chair for you, for you are drunk; though I was as ſober as I am now. He call'd a Chair, and to humour him, I went into it; Now, ſays I to him, pray do you go home: Now by that time, I believe it was within a Quarter of Eleven, or thereabout. After I left him, I had not been at home above an Hour, but I had News brought me that he was beaten, and uſed very ill, and carried home very bad; and this is all I know of the Matter.

Mr. *Major.* Where did you part with him?

Broad. It was in *Bridges-Street.*

Mr. *Major.* Did you ſee which Way he went?

Broad. I did not ſee which Way he turn'd, but it was about Eleven o'Clock, and he told me, he would go directly home.

L. C. J. Was the Mob up in *Drury-Lane*, when he came to you?

Broad. When we were in the Tavern, the Maſter of the Houſe came and told us, that Mr. *Burgeſs*'s Meeting-Houſe was pull'd down, and burning; and that they had begun to pull down another. This was about Ten o'Clock.

L. C. J. Where is his Houſe?

Broad. In *Drury-Lane*, a little way from *Long-Acre.*

L. C. J. Then after you parted with him, he muſt go through the Mob. Now you, who were as ſober as ever you were in your Life, and ſenſible how bad he was, muſt have taken ſo much Care as to conſider, which way he was to go home: How comes it to paſs, you did not ſee him home?

Broad. My Lord, I would have ſeen him home, but I am not a Man that engage myſelf in Mobs, for thoſe of my Employment generally ſuffer in Mobs; I avoid them if I can; and if I meet them, I give them all the good Language I can.

L. C. J. But there is another way you might have ſecured him from the Mob, for I ſuppoſe he was well diſpoſed to have ſtaid longer at the Tavern.

Broad. Yes; but I did gueſs, that at Eleven o'Clock thoſe Mobs are generally over; and before we came out of the Houſe, we heard the Guards were abroad, and I gueſs'd he might go home ſafely the Way he was to go.

L. C. J. You have given another Reaſon why you ſhould take care of him, becauſe he was troubleſome in Drink, and was a Bailiff, and liable to be affronted; therefore you ſhould have taken care of him.

Broad. I believe if it had been another Night, I might; but if I had gone with him, then I might have been in the ſame Condition with him: I don't know but I might have been forced to ſay ſomething or other, to ſave myſelf from the Mob.

Purchaſe. My Lord, the Meeting-Houſe is as near my Houſe as it is from hence to your Lordſhip; at a back Window I can hear them preaching.

Then Mr. Bembridge *was ſworn.*

Mr. *Darnell.* Pray give an Account of what you ſaw and obſerved of the Priſoner, that Night that the Mob was up.

Mr. *Bembridge.* My Lord, I was at an Oil-Shop, at *Long-Acre* End, with ſeveral others, about Eleven o'Clock, when the Guards came and diſperſed the Mob that were there. When they had been there a Quarter of an Hour, or thereabout, the Priſoner came to the End of *Long-Acre*, and ſtood there by himſelf, and Nobody near him. One rode up to him, and talk'd to him for ſome time; they had not talk'd long, before two more rode up, and fell upon him, and drove him a few Doors; he retired, and there they left him.

L. C J. Who were the others that were with you in the Houſe?

Mr. *Bem.* There was one *Jefferies*, who lives in *Bloomſbury-Square*, and a Watchman in *Gray's-Inn* Paſſage, and one Mr. *Cheekly:* There was another Gentleman of the *Temple*, but I don't know his Name.

L. C. J. What was your Buſineſs there?

Mr. *Bem.* I was going home, and the Mob was there, and I got in for Shelter.

L. C. J. Who did you ſee at the Fire, beſides the Priſoner?

Mr. *Bem.* There was Nobody there then.

L. C. J. When did you ſee the Priſoner firſt?

Mr. *Bem.* It was about Eleven.

L. C. J. Were the Guards there then?

Mr. *Bem.* Yes; and they had diſperſed the Mob.

L. C. J. What do you mean by the Mob being diſperſed? Was the Street clear? Or were they of the Sides of the Street?

Mr. *Bem.* Some of the Guards rode one way, and ſome another; and they drove the Mob before them.

L. C. J. Were there none of the Mob in the Street?

Mr. *Bem.* I ſaw none nearer than where the Guards had drove them to.

L. C. J. You ſay you ſaw the Priſoner there; What was he doing?

Mr. *Bem.* Nothing at all.

L. C. J. Had he his Sword drawn?——Mr. *Bem.* No.

L. C. J. When the Gentleman came up ſingle to him, and they talk'd, had he his Sword drawn?——Mr. *Bem.* No.

L. C. J. How long after that, before the other Gentleman came up?

Mr. *Bem.* Inſtantly.

L. C. J. When they came to him, what paſs'd?

Mr. *Bem.* They ſtruck at him.

L. C. J. What did he do?

Mr. *Bem.* I ſaw him do nothing, but retire back towards *Long-Acre.*

Mr. *Major.* Was any Reſiſtance made by him to the Guards?

Mr. *Bem.* No.

Then Henry Avery *was ſworn.*

Mr. *Darnell.* Pray give an Account what you know of the Priſoner, the Firſt of *March* laſt; where you ſaw him, and in what Condition he was.

H. Avery. I had been appraiſing ſome Goods for Mr. *Broad*, and after we had done, he aſk'd us, Where we would go to make up the Inventory? Says I, To the *Croſs-Keys* in *Covent-Garden.* When we had made our Inventory, Mr. *Broad* came in, and ſaid, He wanted *Purchaſe.* He ſent for him, and he came very drunk: Soon after, I was call'd out, and left them. All I know of him is, that he was very drunk: He came in a Coach.

Then John Holloway *was ſworn.*

Mr. *Darnell.* Were you at the Tavern, when *Purchaſe* came in?

J. Holloway. I was one of the Appraiſers; we went afterwards to the *Croſs-Keys*, to make our Inventory.

Mr. *Darn.* What Condition was he in?

J. Holloway. Very drunk.

Mr. *Darn.* How long did he ſtay?

J. Holloway. He took part of a Quart of Wine.

Mr. *Darn.* What Time was it?

J. Holloway. It was after Nine, when he came in; and I believe it was after Ten, when he went: We came all away together.

L. C. J. Where did you go?——*J. Holloway.* Home.

L. C. J. Where do you live?—*J. Holloway.* I live in St. *Ann*'s.

L. C. J. Where does *Broad* live?—*J. Holloway.* He lives in St. *Clement*'s.

Then James Blanfield *was ſworn.*

Mr. *Darnell.* Did you ſee *Purchaſe* that Night? And at what Time?

J. Blanfield. About a Quarter after Eleven, I ſaw him come up *Drury-Lane*, towards the Fire, when the Guards were drawn up, and the Mob were gone.

Mr. *Darn.* Were the Mob gone, when he came to the Fire?

J. Blanfield. Yes; except ſome old Women and Children, that were not concern'd.

Mr. *Darn.* Who was with him?

J. Blanfield. There was Nobody with him; but he came to the End of *Long-Acre*, and had not time to ſtand there long, till one ſpurr'd up to him, and then he ſeem'd to lift up his Hand, to keep off the Horſe; and preſently, another ſtruck at him, but he retired towards *Long-Acre*, and I could ſee no more of him.

Mr. *Darn.* Was his holding up his Hand, in your Opinion, any thing more than to defend himſelf from the Horſe?

J. Blanfield. I believe he had no Deſign, but to defend himſelf from the Horſe, and the Blow.

Mr. Att. Gen. You ſay there was no Mob when you was there?

J. Blanfield. No.

Mr. Att. Gen. Did you ſee his Sword drawn?

J. Blanfield. No: He lifted up his Hand, with his Sword in his Hand, but it was not drawn.

Mr. *Thomſon.* What Time was this?

J. Blanfield. Between Eleven and Twelve o'Clock.

Mr. *Thomſon.* How much after Eleven?

J. Blanfield. I believe, about a quarter, or half an Hour.

Mr. *Thomſon.* You ſay, the Guards were there, but no Mob.

J. Blanfield. Yes, a few Women.

Mr. *Thomſon.* What did the Guards do, if there was no Mob there?

J. Blanfield. They rode about to diſperſe the Women, and other People that were there.

Mr. *Thomſon.* You ſay, they diſpers'd the Women, and the other People there. What other People do you mean?

J. Blanfield. People that I ſuppoſe were ſtaring on: The chief Mob were gone.

Mr. *Thomſon.* When you ſaw *Purchaſe* there, there were ſome other People beſides the Women; Was he not among thoſe other People, as you call them?

J. Blanfield. He came up by himſelf, and Nobody with him.

Mr. *Thomſon.* Did he ſtand in the Street alone? Or did he join thoſe other People?

J. Blanfield. There were no others to join with him.

Mr. *Thomſon.* This Man plainly contradicts himſelf.

Then Thomas Street *was ſworn.*

Mr. *Major.* Did you ſee the Priſoner that Night the Mob was up?

T. Street. I am the Watchman that belongs to that Part: I had gone my Round at Eleven, and coming into *Long-Acre*, I ſaw two or three Gentlemen riding after the Priſoner; I ſtepp'd over the way, to ſee what the Matter was, and I ſaw one cutting at him; and he went to ſave the Blow, but his Sword was not drawn, but he fell againſt a Bulk of a Door, at the End of *Red-Lion-Court*; ſo ſays one of the Gentlemen to me, Watchman, go and knock him down; ſo I ran after him, and overtook him: Who are you? ſays I; ſays he, *Street*, it is I, I am drunk; the Guards have abuſed me, and cut at me: And ſo ſeeing him drunk, I let him go.

Mr. *Major.* What Condition was he in?

T. Street. Very drunk, that he could neither ſtand nor go.

Mr. *Darn.* Then you did not ſee any Reaſon to knock him down?

T. Street. No.

Mr. *Darn.* And being a Houſekeeper, you let him go.

Mr. *Major.* Was he heading the Mob?

T. Street. No; I ſaw a great many of the Mob bring a great deal of the Wood to the Fire, but almoſt all the Mob was gone before he appear'd.

Mr. Att. Gen. You ſay he was ſo drunk, he could neither ſtand nor go; and yet you ſay he went into *Red-Lion-Court*; How far is that from *Long-Acre?*

T. Street. A little way. He was very drunk.

Mr. Att. Gen. I find he was not ſo drunk, but he knew you.

T. Street. Yes; but he reel'd very much.

Mr. *Major.* What became of him afterwards?

T. Street. I don't know indeed.

L. C. J. Does he live within your Walk?——*T. Street.* Yes.

L. C. J. Why did you not ſee him home?

T. Street. I was a little ſhort in that.

L. C. J. When you firſt had Notice of the Mob, what did you do?

T. Street. I got up, and went my Round, at Eleven o'Clock.

L. C. J. Your ordinary Rounds, as you uſed to do; but took no Notice of the Mob, did you?——*T. Street.* No.

L. C. J. Did you not go among them, to perſwade them to go home, or complain to the Conſtable?

T. Street. There were Conſtables there preſent.

L. C. J. Did you ſee any among the Mob you knew?

T. Street. No, not one.

Mr. Att. Gen. You knew *Purchaſe*, did you not?——*T. Street.* Yes.

Mr. Att. Gen. And is he the only Man you knew there?

T. Street. Yes, to my Knowledge.

Mr. Att. Gen. Did you take up any body that Night?

T. Street. I aſſiſted our Conſtable, who took up ſeveral.

L. C. J. What did you do with them?

T. Street. We carried Seven to the Watch-Houſe.

L. C. J. What Time was that?

T. Street. About Two or Three o'Clock in the Morning.

Then John Cheekly *was ſworn.*

Mr. *Major.* Did you ſee the Priſoner that Night the Mob was in *Drury-Lane?* And in what Condition was he?

J. Cheekly. My Lord, I had been at the *Fleece* Tavern, and going up *Drury-Lane*, near the *Caſtle* Tavern, I met a great many of the Mob: They ſaid they had been pulling down a Meeting-Houſe near *Long-Acre*, and preſently I ſaw the Guards coming down very faſt. When the Mob were diſperſed, I ſaw the Priſoner coming, with his Sword on his Arm: Preſently, an Officer rode up to him, and the Priſoner held up his Sword in the Scabbard to keep off the Horſe, and Blow from him. The Gentleman rode up to him again, and then the Priſoner did the ſame again. With that another rode up to him, and then he went off towards *Long-Acre.*

Mr. *Thomſon.* What was he doing, that made the Captain ride up to him?

J. Cheekly.

J. Cheekly. He was ſtanding in a reeling Poſture, very drunk: When they drove him to the Bulk, it was as much as he could do to keep himſelf up.

Mr. *Thomſon.* But the Queſtion is, What he did that made them ride up to him?---*J. Cheekly.* He did nothing at all.

Mr. *Thomſon.* Did you not ſee him huzza, or flouriſh with his Sword?

J. Cheekly. No.

Juryman. What o'Clock was it then?

J. Cheekly. A few Minutes before I came there, I aſk'd the Watchman, What o'Clock it was? And he told me, it was half an Hour paſt Eleven.

L. C. J. Where do you live?---*J. Cheekly.* In *Ruſſel-Court.*

L. C. J. What are you?

J. Cheekly. I belong to the Sea; I have been in the Queen's Service.

L. C. J. What Ship do you belong to?

J. Cheek. I was paid off laſt *October*, and am now waiting for Preferment. I have been a Volunteer, with the Queen's Letter, ſeven Years, and a Midſhip-man.

Then Plaxton *was ſworn.*

Mr. *Darnell.* What do you know of the Priſoner at the Bar, that Night the Mob was? Was you ſent for to him?

Plaxton. I was ſent for out of my Bed, between Twelve and One, to let him blood: He was not very well: He had been abroad, and came home in Drink; and his Wife ſuppoſed he had had ſome Hurt, and ſent to me to bleed him, for fear of any Misfortune.

Then John Brooks *was ſworn.*

Mr. *Darnell.* What do you know of the Priſoner that Night?

J. Brooks. My Lord, I know nothing of this Buſineſs; but I never knew any thing, but that he behaved himſelf very well, while I knew him.

Mr. *Darnell.* My Lord, we have a great many Witneſſes to his Reputation, but we will not trouble your Lordſhip with them. We have done with our Evidence.

Juryman. My Lord, we deſire to aſk a Queſtion or two of *Ruſſel* and *Richardſon.*

Then Richard Ruſſel *was call'd again.*

Juryman. You was ſpeaking of the Priſoner's coming down with his Sword flouriſhing, What Time was that?

Ruſſel. It was ſoon after we came to *Drury-Lane.*

Juryman. How ſoon was it after you came?

Ruſſel. It was immediately: We had rode but once round the Fire, and he came as if he came from *Holborn*-wards.

Juryman. Was the Mob all gone away at that time?

Ruſſel. No.

Juryman. How long was it before they were diſperſed?

Ruſſel. It was about a Quarter of an Hour.

Juryman. Can you judge what Time it was?

Ruſſel. It muſt be about Eleven, as near as I can gueſs.

Mr. Att. Gen. Are you ſure he had his Sword drawn?

Ruſſel. Yes; he flouriſh'd it, and made ſeveral Puſhes at us.

L. C. J. When he came in this manner, were you marching? Or did you ſtand with your Horſes drawn up to the Wall?

Ruſſel. We were ſtanding with our Horſes drawn back to the Wall.

Mr. Sol. Gen. Which way did he come from?

Ruſſel. He came the way from St. *Giles*'s.

Mr. Sol. Gen. Then he came from towards *Holborn.* That clears it. The other time, when he came up the Lane, was after they were diſperſed.

L. C. J. Were you between him and *Holborn*, or between him and the *Strand?*

Ruſſel. He came from St. *Giles*'s, and we were between him and the *Strand.*

Mr. *Thomſon.* How long did you ſee him firſt, before the Mob were diſperſed?

Ruſſel. About a Quarter of an Hour.

L. C. J. You ſay you march'd round the Fire, and as you went of one Side of the Fire, they went of the other.

Ruſſel. Yes, my Lord: And afterwards we were drawn up of one Side of the Fire, and the Guards of the other.

L. C. J. When they were quite diſperſed, where did you march then?

Ruſſel. To St. *Giles*'s, and ſo to *Holborn.*

Then George Richardſon *was call'd again.*

L. C. J. What Time was it that he thruſt at the Officer?

Richardſon. It might be about Eleven o'Clock, but I can't tell poſitively.

L. C. J. How ſoon was it after you came to the Fire?

Richardſon. It was preſently after I came up.

Mr. Att. Gen. What Time did you come from *Whitehall?*

Richardſon. Something paſt Ten; and we could not march faſt, becauſe we had the Foot before us.

L. C. J. Did you ſee him as ſoon as you came?

Richardſon. No; there was a great Crowd of People; I rode among them, and as I came back, I ſaw him of the other Side: Captain *Hensbrough* ſpoke ſomething to him, but what I know not; and then he made a Paſs at the Captain, and I ſtruck down his Point.

Purchaſe. I deſire to know which Hand I had my Sword in?

Richardſon. I can't tell that.

Mr. Att. Gen. Are you ſure you ſaw his Sword drawn, and the Thruſt made at the Captain?

Richardſon. Yes, I am.

Then Southerland *was call'd again.*

L. C. J. Can you tell about what Time it was that he was flouriſhing his Sword?

Southerland. It was half an Hour after Ten, when we came from *Whitehall*; and, by the beſt Calculation I can make, it was about half an Hour after Eleven, when I ſaw him flouriſhing his Sword. I aſk'd him, Are you encouraging the Mob? He anſwered me, Are you againſt *Sacheverel?* And then I lifted up my Hand at him.

L. C. J. Where was he then?

Southerland. This was above the Fire, and I ſaw him afterwards below the Fire. As I went to Captain *Horſey* for Orders, I caſt my Eye to the Corner of *Long-Acre*, and there I ſaw him again, in the ſame Poſture.

L. C. J. Are you ſure he had his Sword drawn in both Places?

Southerland. I am ſure of it.

L. C. J. How long might it be between the two Times you met him?

Southerland. A very little Time.

Purchaſe. Which hand was my Sword in?

Southerland. In your Left Hand.

Mr. *Thomſon.* Was it immediately upon your coming into *Drury-Lane*, that you ſpoke to him?

Southerland. Not immediately upon our coming there.

Mr. *Thomſon.* How long did you ſtay at that Fire, before you diſperſed the Mob?

Southerland. It might be more than a Quarter of an Hour.

Mr. *Darnell.* We have done with our Evidence on both Sides. I beg Leave to make a few Obſervations upon the Evidence in Behalf of the Priſoner. We think, my Lord, though he is a Bailiff, (for there ſeems to be ſome Reflection caſt upon him for that Reaſon) yet we doubt not, but he will have the ſame Juſtice done him here, as if he were a Man of the beſt Eſtate: For whatever is determined as to this Man, may be the Caſe of any other who may happen into the like Circumſtances; therefore I beg leave to obſerve, how far any thing is proved againſt him, that may make him guilty of High-Treaſon. We think we have given a full Anſwer to all the Preſumption, that he was engaged in the original Intention of pulling down the Meeting-Houſes, or that he was aiding in the Execution of that original Intention. We think the Evidence on both Sides agree in this, That the Priſoner was not concern'd in the original Intention; and that he was not with the Mob that purſued Dr. *Sacheverel* to *Weſtminſter*, and brought him back in Triumph, and then went to pull down the Meeting-Houſes: But the only Thing that is proved againſt him is, that after they were pull'd down, and after they were burnt, when the Guards were come, and they were diſperſing the Mob, then the Priſoner is ſo unfortunate to be found with his Sword drawn, hallooing, and aſſerting the Right of Dr. *Sacheverel*, and that he would ſtand by him, and encouraging the People to do ſo. This is the moſt of the Evidence that can be againſt him: Then the Queſtion is, Whether this, ſingly, can make him guilty of High-Treaſon? For if his Part in the general Intention be out of the Caſe, as it muſt be if he came after the Fact was committed, then the Queſtion will be, Whether a Man that comes in afterwards, by ſaying the worſt he can ſay, ſhall make himſelf guilty of High-Treaſon?

My Lord, we hope the Evidence on Behalf of the Queen is reconcileable with the Evidence for the Priſoner; and that the Evidence for the Priſoner ſhall be believed, that he only defended himſelf againſt the Guards that rode up againſt him: For *Richardſon* ſays, he did not ſee him when the Guards firſt came there; and that agrees with the Account that *Broad* gave; for he ſays he heard the Guard were marching before they came out of the Tavern. *Blanfield* agrees with the Evidence that *Orrel* gave: Says he, The Mob were diſperſed under the Eaves of the Houſes Says *Blanfield*, At the Time the Guards ſtruck him, there were People under the Houſes: But I don't look upon them to be the chief Mob, but only ſome Women and People looking on. And then the Queſtion is not, Whether his Sword was drawn or not, but on what Occaſion, and what his Deſign was in drawing it? Our Witneſſes ſay, that when the Guards ſtruck at him, he only held up his Hand to defend himſelf; and that might fright the Horſe; and he being angry at it, ſpurred up and ſtruck him. It is natural to think the Guards ſhould ride up to thoſe that were ſtanding in the Street, and enquire who they were. I don't depend on the Circumſtance of his being in Drink, that it is any Excuſe; for then if a Man has ſuch a Deſign as this, he may eaſily pretend himſelf to be in Drink, and he will give himſelf Drink enough to encourage himſelf to do ſo bold an Act: But the uſe we make of it is to ſhew, that he had not any Intention in this. He had drank himſelf too far for to have a Deſign of joining with any Party, or do any particular Thing. And my Lord *Coke*, in his *Pleas of the Crown*, where he is giving his Opinion what is levying War againſt the Queen, ſays, that the Act alone is not ſufficient to convict the Party; but the Mind is to concur in it. It is not barely doing an Act that is ſufficient to convict a Man; for he muſt do it with that Deſign. Indeed if a drunken Man ſtabs another, it is Murder; becauſe Malice is ſuppoſed where ſuch a Fact is done. But in Caſe of High-Treaſon there muſt be an Intention proved in the Party that doth the Fact. If he was in that Condition at the Time he came out of the Tavern, and did any thing by way of encouraging them, we hope it is not ſuch an Evidence againſt him as will make him guilty of any Part of the Intention, if his Mind did not concur in it.

Mr. Juſt. *Tracy.* My Lord *Coke* ſays, in the Caſe of *Oldcaſtle*, where he was forced, and did the Fact *pro timore*, that ſuch an Act could not make him guilty.

Mr. *Major.* My Lord, we hope the Evidence is not ſufficient to induce the Jury to believe he was concerned in the general Intent to pull down the Meeting-Houſes; there is no Proof offered that he had any Intention or Part in that Matter; nor does it appear that he was privy to it. We have ſhewn where he was till the Time he was met by the Guards. As for what was done by him then, it will not be pretended, that barely aſſaulting the Guards is levying War; but it muſt be conſtrued to be an aiding and aſſiſting thoſe Perſons in that Intent to pull down the Meeting-Houſes. As for that, it don't appear he had any Part in it, but it was done before he came to them: Nay, he could not be aſſiſting to the Mob; for before he came to them, the Guards were come down, and the Mob were ſoon after diſperſed. The firſt Time that any Account is given of him is, when he came behind the Grenadiers. Now can it be ſuppoſed that any Man that intends to head the Mob would come among the Horſes, and that ſingly? Whatever he ſaid, his Curſing and Swearing that will not make him criminal in this Caſe: It appears to be a thing that was accidental and done on a ſudden, and was the Effect of his Drink, and that which a Man that had no Intent of joining in the general Deſign might be guilty of.

Mr. Att. Gen. May it pleaſe your Lordſhip, and Gentlemen of the Jury, we think that, notwithſtanding any Thing that has been ſaid by the Witneſſes, or inſiſted on by the Counſel, it is a plain Caſe that the Priſoner is guilty of the Crime laid to his Charge. They have called a great Number of Witneſſes; and I believe their Intention in that is, that you ſhould take them by Tale, and not by weighing the Evidence and the Force of it; for I will be bold to ſay, as to all the Witneſſes that have been produced to prove him drunk, nothing which they have ſaid as to that Point can make any Alteration in the Caſe. As to the Witneſſes produced for the Queen, I don't find they pretend to ſay any Thing in Diminution of the Credit of them; nor can they ſay that any one of them is likely to be biaſſed, or to be under a Miſtake; only one of them that took him to be a Country Gentleman, when he proved to be a Bailiff. As Mr. *Darnell* ſays, God forbid that any one ſhould have harder Meaſure becauſe he is a Bailiff, but that he ſhould have the ſame Juſtice as any other Man: But I muſt ſay, It is an eaſy Miſtake to take him for a Gentleman, when it appears by the Evidence, that one Bailiff can go to the Tavern in his Coach, and the other go from thence in his Chair. The Counſel for the Priſoner have inſiſted, that our Evidence don't maintain the Charge; for they ſay this Riſing is not High-Treaſon, if there were not a genaral Intent to pull down Meeting-Houſes: And we don't bring it home, to make it appear that he was privy or conſenting to this Deſign; but we deſire they will conſider, the firſt Witneſs gives an Account that a Reſolution was taken on *Tueſday* to pull down *Burgeſs*'s Meeting: By whom was that taken? It was by the Friends of *Sacheverel* that came hallooing with him. Who is it afterwards that pulled them down? Thoſe that halloo and cry out for High-Church and *Sacheverel*. What did the Priſoner ſay when he was among them? Damn them, he was for High-Church and *Sacheverel*; he would loſe his Life in the Cauſe. It is certain theſe Meeting-Houſes were pulled down, and that by thoſe People thus aſſembled, and who cried out for *Sacheverel*, and were the Friends of *Sacheverel*, and declared they would oppoſe all that were Enemies to him, and this Man cried out as loud as any of them. But we don't take it that it is neceſſary to prove, that every Man that was concerned in this Matter was originally in the Conſult and firſt Deſign; but the Evidence gives an Account, that he joined with them, he aſſiſted them. If drawing his Sword; if flouriſhing it, and calling out to them to reſiſt the Guards, and puſhing at the Officer of the Guards, is reſiſting, ſurely there is ſufficient Proof againſt him. If a rebellious Number of People are got together, and a Man, that knows not of it at firſt, will join with them, and act with them, and that which they are doing is Treaſon, though he came in late of the Day, he muſt deſerve the ſame Reward as thoſe that came in early in the Day.

There is one Thing obſervable in this Caſe, that this Meeting-Houſe was not ſo ſoon deſtroyed as Dr. *Burgeſs*'s; for the Fire was almoſt out there, when the Waterman, who is convicted, hallooed them to this Meeting; that it was burnt firſt, and then they came to this Fire, and that was much later. It appears he lives in the Neighbourhood of this Meeting-Houſe; for he ſays he can hear them into his Houſe: Now a Man that had been in the Neighbourhood of ſuch a Place, and had been a good Subject, if there had been a tumultuous Deſign to pull down Part of his Neighbourhood, inſtead of joining with thoſe People, he would have endeavoured to have hindered them from doing Miſchief; but inſtead of endeavouring to prevent it, you find he joins with them, he draws and flouriſhes his Sword, and acts in it more than any other Perſon I have had an Account of. The other Witneſſes are to give an Account where he was till Five in the Afternoon, and thence till Eight at Night; and afterwards he is ſent for by Mr. *Broad*, and with him he ſtays till this Matter is tranſacted. The Places he has been at before, are the Ale-Houſe, the Brandy-Shop, and the Tavern: Are not theſe the proper Places to prepare thoſe that are to engage in theſe Sort of Things? For whenever People go on theſe Attempts, it is neceſſary to fortify themſelves by ſtrong Waters, and ſtrong Liquors, as he did. The Witneſſes that ſaw him there, and give an Account of him, ſome of them ſay, he only held up his Hand; others ſay, he had a Sword in his Hand, but it was not drawn, and he held it up only to ſave himſelf from the Aſſault of the Guards. Now the Account you have is, that the Guards ſtruck with the Flats of their Swords, and you hear of Nobody killed, nor any great Harm done to any body; therefore it is not to be thought they ſhould, without Provocation, fall upon this Man, and attack him. As to the Exactneſs of Time, there is little Weight to be laid on it, for the whole Tranſaction don't take up above the Compaſs of two Hours. The Guards came out about half an Hour after Ten, and before Twelve the Mob was diſperſed. But that which you will take into Conſideration will be the Series of the Facts, and ſee how they ſtand. *Orrel* ſays, he ſaw the Priſoner with his Sword drawn, and flouriſhing it, and when the Guards came, he aſſaulted them in the Manner you have heard; and they have ſaid nothing to impeach our Evidence; what they ſay makes it appear he was there, and thus acting among them.

Mr. Sol. Gen. My Lord, the Evidence given by the Priſoner, and the Defence made on his Behalf, is ſo far from giving any Anſwer to our Evidence, that it renders the Fact more probable than it was before: For they have proved, that he is a Man likely to be concerned in ſuch an Affair; that he had been drinking all Day, and fit to engage in ſuch a Matter; and that he is troubleſome in his Drink; which are Circumſtances that ſhew the Inclination of the Man, and make it probable that he ſhould engage in this Matter. The Facts we take to be High-Treaſon. They ſay on the other Side, it is not ſo, becauſe we muſt prove a general Intent to pull down all Meeting-Houſes, and the pulling down a ſingle one is not ſufficient. I will not now diſpute that point with them; for that there was ſuch an Intention appears moſt plainly by what paſſed that Night, by the ſeveral Meeting-Houſes that were pulled down. It was a general Intention, or elſe they could not have gone through ſo many in ſo ſhort a Time: And it is not neceſſary to prove any previous Conſult, for the Act itſelf is Treaſon: Where the Intention is the Treaſon, there the Act muſt be proved that ſhows it. So it it is in the Caſe of counterfeiting the Coin, Nobody will ſay there is any need to prove any Deſign: That there was ſuch an Intention is plain, by what was committed; and any one that joins with ſuch a Number of People who are committing Treaſon, is equally guilty with them. If he knew nothing of it till he ſaw them, yet if he joins with them in an Action that is Treaſon, he will be equally guilty with them. They ſay he had not his Sword drawn; that he was going home, and he only lifted up his Hand, with his Sword in his Scabbard, to defend himſelf. But that Evidence don't interfere with what is offered on Behalf of the Queen; or if it did, yet we think our Evidence is of greater Credit and Weight than what they offer: For they that encounter a Man who has his Sword drawn, can never be miſtaken, but deſerve more Credit than thoſe that are only paſſing by, and have no Danger from, or Concern with him; but this is all conſiſtent, for *Ruſſel*, and thoſe who ſay his Sword was drawn, ſay, he came from St. *Giles*'s way, the others ſay, it was after the Mob was diſperſed; and that he came up the Lane; and that he went off by *Long-Acre*, and they ſaw him no more. Now, ſince Nobody ſaw him home, he might go that Way, and afterwards come down and join the Mob, in the Manner the Soldiers have told you, and then he might be driven off, and come ſome way round again, with his Sword in his Scabbard: And theſe muſt certainly be different Times, for thoſe who ſpeak of his Sword being drawn, ſay, it was when he came from *Holborn*; and they that ſay his Sword was in his Scabbard, ſay, it was when he came from the other way, and then there can be no Contradiction between the Evidence. And we take it, the Law is as plain as the Fact, and that it is High-Treaſon.

Mr. *Themſon*. My Lord, I would ſtate the Objection in the utmoſt Latitude; and yet, with Submiſſion, the Facts proved on the Priſoner make him guilty of High-Treaſon. They have inſiſted, that there was no previous Intention in this Man to pull down theſe Meeting-Houſes; that at that Time he was in Drink, and not capable to have any Intention of doing any particular Act whatever, and that to the aiding and aſſiſting *Mens* muſt be *rea*; and that he came when the Meeting-Houſe (the Materials of which made the Fire in *Drury-Lane*) was pulled down, and all was over, and ſo neither in the firſt Deſign, nor aſſiſting at the Execution of it. This, my Lord, I take to be the Strength of their Objections. As to the previous Intention, that is not neceſſary to be proved, and has been ſo lately determined, that I need not trouble your Lordſhip to repeat any Thing about it. If a Man joins in an Undertaking of this Kind, which was general, though he comes by Accident, it makes him a Principal in that Matter. Then they would make uſe of his Drunkenneſs, to excuſe him from his aſſiſting in the Deſign; they ſay, if he had not his Senſes, he could have no Intention even to aid or aſſiſt any Deſign. Thoſe Gentlemen know very well, that Drunkenneſs is no Excuſe for any Act whatever: If a man does deprive himſelf of his Senſes, and commits a Fact that would be a Crime in a Man not in Drink, it ſhall be conſtrued to be his Act, as much as if he had his Senſes. *Beverly*'s Caſe, in the 4th Report, is expreſs in that Point. Then they ſay, the Meeting-Houſe was pulled down before, and he came when all was over. My Lord, I appeal to the Memory of your Lordſhip, and the Jury, whether they are not miſtaken in that Fact; for the Fire was burning when he came, and the Mob about it; they were then burning the Inſide of that Meeting-Houſe which they had pulled down; and if they had not been diſperſed, in all Probability would have gone on with their Deſign; and he was there when the Guards were endeavouring to diſperſe them, and prevent their going on to do further Miſchief, and he oppoſed them. They ſay, there was no Reſiſtance made by the Mob, they were quiet; but this Man did reſiſt, he puſhed at the Horſes, and at the Men, if you will give Credit to the Witneſſes; and he did as much as was in his Power to animate and encourage the Mob to reſiſt: By his Expreſſions, and his Actions, he endeavoured to hinder the diſperſing of that Mob, who were executing a treaſonable Deſign. That is the aiding and aſſiſting of them, which is his Crime. Then they ſay, he was there accidentally, and fell in as he was going home quietly. I take that to be otherwiſe on the Evidence; for however he might be left by Mr. *Broad*, he was ſeen coming down from St. *Giles*'s, whereas his Way home was the other Way. We muſt ſubmit it, my Lord, whether his aiding and aſſiſting in this Manner, does not make him guilty of Treaſon, as well as thoſe who were executing the traitorous Deſign.

L. C. J. Gentlemen of the Jury, *George Purchaſe* ſtands indicted, for that he, with a great Multitude of other Perſons armed, did, the firſt of *March* laſt, levy open War againſt her Majeſty. The Evidence that has been given by the Queen's Counſel, tends to ſhew a Deſign to pull down the Meeting-Houſes about this Town, and that Deſign executed on a great many of them: The Guards coming to diſperſe thoſe that were ſo employed, and the Priſoner reſiſting the Guards, joining with the Mob, and aſſiſting them. To prove this, they produce *Tolboy* to give an Account of a Diſcourſe, rather beginning than finiſhed, of a Deſign of pulling down Mr. *Burgeſs*'s Meeting-Houſe; ſome were for pulling it down immediately, others were for deferring it till the Morrow, and others for letting it alone till the Trial was over: And as they were thus talking, he left them. He calls it a Reſolution of pulling them down, becauſe Nobody did oppoſe it, only differed about the Time, but he did not ſtay till they came to any fixed Reſolution. The next Witneſs is *Orrel*, who gives you a very particular Hiſtory of this Action: He tells you, at *Leonard*'s Coffee-Houſe he had heard that they were pulling down Mr. *Burgeſs*'s Meeting-Houſe; that he went into that Meeting-Houſe twice or thrice while they were pulling it down; that thence they went to *Fetter-Lane*; that they had almoſt finiſhed the Work there; he found almoſt every thing there down, and they were carrying the Materials to *Holborn*, and burning them: Thence they went to *Lincoln's-Inn-Fields*, and there they found a Fire, where they were burning the Materials of Mr. *Burgeſs*'s Meeting-Houſe. He tells you what Outcries there were there, and ſpeaks of ſome that called them to *Drury-Lane*, and a Conſult that was, Whether they ſhould go thither, or to *Wild-Street*? That ſome that headed the Mob, ſwore they would have all the Meeting-Houſes down, and called them

them along, and led them to *Drury-Lane*; that when he came there, he found them breaking down the Door of that Meeting-Houſe. He tells you what paſs'd there; that he went afterwards, and met the Guards, conducted them to *Drury-Lane*, and run before them; that the Horſe were commanded to diſperſe the Mob; that he ſaw one with a Sword, that was ſheltering himſelf under the Houſes, and there he puſh'd at the Horſes with his Sword. His Expreſſion is, that he poked; he did not make a regular Paſs, but poked at them; that ſeveral of them ſtruck at him, and drove him from among them; that afterward he ſaw him ſtand at the End of *Long-Acre*; that he went to him, and perſuaded him to go home, but he did not think fit to go home; but when the Guards came up, he reſiſted them: Says the Witneſs to him, Do you conſider what you do in oppoſing the Guards? You, in effect, oppoſe the Queen: What is his Anſwer? It was, Damn you, Are you againſt *Sacheverel?* Thereupon, he cries out, High-Church and *Sacheverel!* He would fight the Guards, and he would loſe his Life in the Cauſe; with ſuch like Expreſſions, which he repeated ſeveral times, and ſhews how reſolute he was in the Matter. He tells you, that he reſolutely made a full Paſs at one of the Officers, as he was partly paſs'd by him, pointing towards his Flank; and he apprehends he muſt have run him through, but that another Soldier ſtruck down his Point; that then the Soldier ſtruck at him, and the Witneſs apprehending it might produce more Blows, and that there might be firing, he thought fit to retire: That he went down the Street, and the Mob was forced by them that way, and he heard ſome of them declaring, We will be even with them To-morrow Night, for they dare not fire upon us. He gives you an Account of the Place where he firſt ſaw this Man, which was over-againſt the Pewterer's, at the Corner of *Queen's-ſtreet*, which is between *Long-Acre* and St. *Giles*'s.

The next Witneſs is *Ruſſel*, who is one of the Horſe-Grenadiers, and one of the firſt Body that came into the Lane. He ſays, they were commanded to diſperſe the Mob, and to take Care to place themſelves ſo againſt the Houſes that Nobody ſhould come behind them, and that they ſhould hinder any body from paſſing before them. That Direction was prudent and neceſſary; for if they had ſtood ſo, that the Mob might have come behind them, they would ſoon have had them off their Horſes. He tells you, that the Priſoner came down from towards St. *Giles*'s, as they were drawn up in this Manner, with the Horſes Tails to the Wall. He tells you, this man did not think fit to paſs before the Horſes in the open Street, but had a Mind to get in behind the Horſes, and did get paſt one of them, but the Witneſs's Horſe being drawn back between two Bulks, he could go no further, and the Witneſs beat him out: That afterwards he came at the Head of the Mob, and flouriſh'd his Sword, and ſwore, Damn you, who are you for? Are you againſt *Sacheverel?* He takes Notice, that as they diſperſed the Mob of one Side, they gather'd on the other for a while; and it was about a Quarter of an Hour before they had quite diſperſed them.

The next is *Southerland*. He tells you, that he ſaw him ſeveral Times; that he drew up his Grenadiers at the End of *Queen's-ſtreet*, and he commanded them to draw back, ſo that none might come behind them; that he ſaw the Priſoner flouriſhing his Sword, and held out the Point to him, but did not make a Paſs; then, he ſays, he loſt him for a while, but afterwards, when the greateſt Part were diſperſed, he ſaw him ſtanding over-againſt *Long-Acre*, with his Sword in his Hand, and told the Captain he had been troubleſome to him before, and the Captain, thereupon, bid him cut him to Pieces, as his Expreſſion was; that they rode up to him, but the Priſoner made his Eſcape into *Long-Acre*.

The next is *Richardſon:* He is a Trooper in the Third Troop of Guards: He tells you, that he remembers the Priſoner, when he rode in the Firſt Troop; and that he knew him abroad, and here. He gives an Account in what Manner they march'd; that at the Corner of the Street, Captain *Henſbrough*, (whom he believes the Priſoner muſt know, becauſe he was in the Guards at the ſame Time) ſpoke to him, but what he ſaid the Witneſs don't know; but as he paſs'd by him, the Priſoner thruſt at him, and the Witneſs apprehending he intended to kill the Captain, he beat down the Point of his Sword, and ſtruck at him with his Sword, but the Point hitting againſt the Pent-houſe, his Blade broke in Pieces. This is the Subſtance of the Evidence for the Queen, and, if there be no Anſwer made to it, proves him to be aſſiſting this Mob, and oppoſing the Guards, and attempting to kill the Captain, and taking the beſt Advantage to do it, as he paſs'd by him.

On the Priſoner's Side, they have produced ſeveral Witneſſes, a great many in Number. They begin with him the Morning, and give an Account, That in the Morning he came to *Sheer-Lane* to execute a Writ, and about Twelve the Money was paid, and then they parted.

The next Witneſs is *Johnſon*; he ſays, they parted at half an Hour after Eleven; ſo that theſe two two differ in their Accounts about half an Hour; for one ſays they parted at Twelve, and the other ſays, at half an Hour after Eleven: This I take Notice of only to ſhew an Uncertainty as to the Time.

Benjamin Holden is the next; he ſays he went with the laſt Witneſs, and the Priſoner, to the *Savoy*; and they parted at Twelve, and met again at Two. One Uſe they make of this Evidence is to ſhew, that he was not in any Cabal that Day, for they ſhew how he employed his Time: But you will obſerve, there are two Hours, from Twelve till Two, which they give no Account of; though they pretend to ſhew where he was all the Day. This Witneſs ſays, they parted about Four or Five o'Clock, and then the Priſoner went to *Grove*'s Brandy-Shop: *Lane* ſays, he drank at his Maſter's Houſe till paſt Five, and then they went to the *Horſe-Shoe* Tavern, and came back to the Brandy-Shop about Eight, and continued drinking there about an Hour.

The next Witneſs is *Dupper*, who keeps the Tavern; he ſays, they came to his Houſe about Five or Six o'Clock, and went before Nine; and ſatisfies you, that during all that time they were in his Houſe: *Roch* went home with him from *Grove*'s. I ſhould take Notice, that all theſe ſay he was drunk. She ſays, ſhe got him home, but then he was ſent for by Mr. *Broad*: He was much in Drink, and they got a Coach, and another went with him to ſee him there. *Loveday* ſays, he was in Drink: and when it was propoſed for him to go to Mr. *Broad*, ſome ſaid, it was not fit for him to go, becauſe he was in Drink; and this Witneſs went with him, to ſee him ſafe there. Mr. *Broad* tells you the Occaſion of being at the Tavern; ſome Goods were taken in Execution, and as they were making an Inventory, a Warrant was brought to him againſt a Gentleman, and he ſent to the Priſoner for his Aſſiſtance, but he was ſo drunk he did not think him fit for Buſineſs, and bid him go home again; which he would not do, unleſs he would give him a Pint of Wine. When they came away, he told Mr. *Broad* it was a mobbiſh Night, and he would ſee him home, and fancied he was drunk, and would make him go into a Chair, and then the Priſoner went towards *Drury-Lane* in order to go home.

The next is *Bembridge*; he ſays, he was at an Oil-Shop, at *Long-Acre* End; that about Eleven the Guards diſperſed the Mob; that afterwards the Priſoner ſtood at the End of *Long-Acre*, and an Officer rode up to him; that the Mob was then diſperſed, and the Officer having ſpoke to him, ſome others ſtruck at him, and forced him away; he ſaw no Sword at all that the Priſoner had. *Avery* ſays, he was with *Broad* when the Priſoner came in, and ſays he was drunk. *Holloway*, the Appraiſer, ſays, the Priſoner was drunk, and that he went away with Mr. *Broad* and him; and tells you, it was after Ten when they parted. Then *Brathwaite* tells you, he ſaw him a quarter after Eleven come up the Lane towards the Fire; that he came all alone; that one of the Guards ſpurr'd up to him, and ſome of them ſtruck at him, but he did not ſtrike at them, but ſeem'd to lift up his Hand to prevent the Horſes from coming upon him. The Watchman tells you, it was a quarter after Eleven; that the Guards ſtruck at him, but he got up the Court, and they ſent the Watchman after him to knock him down, but he knowing him, did not think fit to do it. *Cheekly* ſays, That at the *Caſtle* Tavern he met the Mob; and ſome of the Guards rode up to the Priſoner, but the Mob was gone a quarter of an Hour before; and ſays, that the Priſoner had no Sword. *Plaxton* only ſays, that he was ſent for that Night to let him Blood: And *Brooks* gives ſome Account of his Behaviour.

The Matter will be now for you to compare theſe two Evidences together; and to conſider, firſt, whether thoſe things are true which are ſworn by the Queen's Witneſſes, or whether they are anſwered by the Witneſſes for the Priſoner; and then what Streſs is to be laid upon his being in Drink: And as there is no Objection made to the Witneſſes of either Side, you are to take what they have ſaid to be true, abating the little Miſtake a Man may fall into as to the Exactneſs of Time, and the like. As to what they would pretend, of his going ſtraight home from the Tavern, you will obſerve there is time enough for him to have done all that he is charged with; for it all happened in a quarter of an Hour, or a little more. If he parted from the Tavern about Ten; from that time till a quarter or half an Hour after Eleven is time enough to do all that has been ſpoken of. I think there is little Streſs to be laid upon the Time, becauſe there is a Series of Facts: The firſt thing done by him, before the Mob was diſperſed, was his coming behind the Horſes; and you will find the Reaſon for that Command of the Officer to let none come behind him: But he, as drunk as he was, knew there was no hurting the Guards, unleſs they could get behind them. He had been in the Guards himſelf; and you muſt conſider what Deſign he had in getting behind them, when the Street was open for him to go in. But if he had a Deſign to get behind them, that the Mob might pull them off from their Horſes, he acted very rationally, though he was drunk. That Fact was proved by *Orrel* and *Ruſſel*. Another Fact was, when they were drawn up above the Fire near *Holborn*, he was then coming down from St. *Giles*'s: So that this is plainly not the Time that the Witneſſes ſpeak of when he was coming up the Lane. Then this was only when the Horſe-Grenadiers were there; and the other was when the Horſe-Guards came, when they were drawn up below *Long-Acre*; and there they ſwear he made a Paſs at Captain *Henſbrough:* And *Ruſſel* tells you, that as he ſheltered himſelf under the Houſes, his Sword ſtruck againſt the Penthouſe, and broke to pieces. *Southerland* ſpeaks of another time when he was at the Corner of *Long-Acre*; and then indeed he was doing nothing: And that is the time when he told the Captain that he had been troubleſome to the Grenadiers; thereupon the Captain bid him go and cut him to pieces: He did go; and then the Priſoner made off: But this was when the Mob was in a great meaſure diſperſed. Now when do his Witneſſes ſpeak of? They ſpeak of a time when he came up the Lane. That ſurely is not the time that either of thoſe Witneſſes ſpeak of: They ſay he ſtood quiet, and a Soldier rode up to him, and ſtruck him. You will conſider whether that was not the time that *Southerland* ſpeaks of. So that you will conſider whether the Evidence of both Sides is not reconcileable; whether after he parted from *Broad*, he might not join the Mob, come down from towards St. *Giles*'s, get behind the Horſe, and afterwards make a Paſs at the Captain, and then be driven down with the Mob towards the lower End of the Street: If ſo, it was natural, when they were driven down the Lane, for them to go home; and as his home was up the Lane, he muſt come back alone. If you do believe he was guilty of reſiſting the Guards in this manner, when he was admoniſhed what the Conſequence was, and he, inſtead of making an Anſwer, only aſks, Are you an Enemy to *Sacheverel?* and encourages the Mob to follow him; you are to conſider how far this will make him guilty with the reſt: For the Counſel for the Priſoner, though they object to the Evidence of what paſſed in the *Temple*, yet they agree this Tumult was a rebellious Tumult; and the Fact ſhews there was ſuch a Deſign. Indeed they did not pull down all the Meeting-Houſes; but the Reaſon was, becauſe the Guards diſperſed them. They admit therefore this was levying War in the Perſons concerned in it; but they would excuſe him, that he came late and very drunk, and did nothing, but was beat by the Guards; and that his Drunkenneſs diſables him from having a Share in the Deſign; and therefore he can't be guilty. It is inſiſted, that it is neceſſary he ſhould be engaged in the original Deſign: But there is no need of that; for that is the Earl of *Eſſex*'s Caſe: It is there adjudged, that the

the Earl of *Southampton* was guilty of Treaſon, by joining the Earl of *Eſſex*, though he did not know of his Deſign. And thoſe that diſperſed upon the Queen's Proclamation, it is ſaid they were entitled to the Queen's Grace; but it is not ſaid they were not guilty of High-Treaſon. In Felony there may be Acceſſaries, thoſe that are concerned in contriving the Felony, or afterwards in aſſiſting the Perſon; but in High-Treaſon all are Principals, and are guilty equally with thoſe that are the Actors. If there is a Deſign to levy War, and it is not levied, thoſe who were in the Deſign are guilty of Treaſon; and ſo thoſe that act in it, though they were not in the original Deſign; are guilty. Say they, He was not at the pulling down any Meeting-Houſe: It is true; but he was defending thoſe that did. It is plain, by the Courſe they took, if they had not been diſperſed, they would have pulled them all down! It is not indeed accompliſhed; ſome of them are ſtanding; but it is becauſe they were diſperſed. Now is not this aiding them, when he endeavours to kill the Captain of the Guards, who came to diſperſe them? And if he could have prevailed to have baffled the Guards, they might have gone to the reſt; and when they had pulled them down, they might have pulled down every Man's Houſe they thought fit. My Lord *Coke*'s Expreſſion is made uſe of, That the Act don't make the Man guilty, unleſs the Mind be guilty; therefore they would infer, that he muſt be concerned in the Deſign originally. This is a great Fallacy; *Oldcaſtle* was at War againſt the King; ſeveral furniſhed him with Victuals and Drink, and it was found they did it merely for Fear of Death; but as ſoon as they could eſcape from him, they did; and thereupon they were adjudged not to be guilty of Treaſon. Now you may eaſily obſerve the Difference in this Caſe: If a Man be *non compos*, it excuſes him from Felony, and all other Crimes. That Man can't be criminal that has not the Uſe of his Reaſon; but can that be applied to any one that is drunk? That Matter is ſtated in the ſame Caſe: He ſays, If a Man will make himſelf drunk, ſhall this voluntary, this criminal Incapacity of his Mind excuſe him? No; he ſays it ſhall not. And it would be of dangerous Conſequence if it ſhould. Indeed, his being drunk might make him more forward than otherwiſe he would have been; but you ſee he had Senſe enough to get between the Guards and the Wall, and to attack the Captain when he was paſſed by him. If he can't be criminal unleſs his Mind be ſo, I would aſk, If he had killed the Captain, would it not have been Murder? If ſo, then if the Act be Treaſon, he would be guilty notwithſtanding his Drunkenneſs. Therefore if you do believe he committed the Facts, there is no Regard to be had to his Drunkenneſs. If the Witneſſes don't contradict one another, but they may be reconciled, you need not then weigh which Side you moſt credit; but if you think they can't be reconciled, but that the Witneſſes overthrow one another, then you muſt conſider which of them is of moſt Weight; but if they can't be reconciled, I think the Jury can go in conſidering Evidence: And where ſuch a Conſtruction can be put on it, it ought to ſtand.

Mr. Juſtice *Tracy*. As to the Matter of Law, I concur with my Lord Chief-Juſtice.

Mr. Baron *Bury*. So do I.

Then the Jury withdrew; and being returned, found a ſpecial Verdict.

A Copy of the ſpecial Verdict in the Caſe of George Purchaſe, *tried for High-Treaſon, in levying War againſt the Queen, under Pretence of pulling down Meeting-Houſes*, 9 Annæ, 1710, *as it was drawn up for the Conſideration of all the Judges.*

Midd. ſſ. MEmorand' qd ad Seſſion' Dnæ Rnæ de Oier & Terminer tent' pro com' Midd' apud Weſtm' in com' præd' die Martis undecimo die Aprilis anno rni Dnæ nræ Annæ, &c. nono coram, &c. præſentat' exiſtit qd Georgius Purchaſe nup' de paroch' Sci Clement' Dacor' in com' Midd' Lab' timorem Dei in corde ſuo non hens nec debm ligeanc' ſuæ ponderans ſed inſtigatione diabolica motus & ſeductus cordialem dileccon' & veram debit' & nralem obedienc' quas veri & fideles ſubdit' ſereniſſimæ & illuſtriſſimæ Principis Dnæ nræ Annæ Dei gra' Magn' Britanniæ Franciæ & Hiberniæ Rnæ Fidei Defens', &c. erga ipam Dnam Rnam gererent & de jure gerere tenent' penitus ſubtrahens ac machinans ac totis viribus ſuis intendens pacem & coem tranquillitat' hujus Rni pturbare primo die Martii anno rni dcæ Dnæ Rnæ octavo apud præd' paroch' Sci Clement' Dacor' in com' præd' proditorie compaſſavit imaginat' fuit & intendebat guerram rebellion' & inſurreccon' contra dcam Dnam Rnam infra hoc Regnum Magnæ Britanniæ levare & ſuſcitare Et ad eaſdem pdicon' imaginacon' & intencon' ſuas præd' perimplend' & ad effem redigend' idm Georgius Purchaſe præd' primo die Martii anno octavo ſupdico vi & armis, &c. apud poch' Sci Clement' Dacor' in com' præd' contra dcam Dnam Rnam veram & indubitat' Dnam ſuam cum multitudine gentium jur' præd' ignot' ad numerum quingent' pſon' modo guerrino armat' & arraiat' videlt gladiis baculis & fuſtibus & al' armis tam offenſivis qm defenſivis illicite & pditorie adtunc & ibm aſſemblat' & congregat' guerram publicam contra dcam Dnam Rnam pditorie paravit ordinavit & levavit contra ligeanc' ſuæ debm contra pacem dcæ Dnæ Rnæ nunc coron' & dignitat' ſuas, &c. Necnon contra form' Statut' in humoi caſu edit' & provis' per quod præcept' eſt vic' com' præd' qd non omitt', &c. quin caperet præfat' Georgium Purchaſe ſi, &c. ad reſpond', &c. Qd quidem indicament' præfat' juſtic' dcæ Dnæ Rnæ per lras patent' ipius Dnæ Rnæ ſub magno Sigillo ſuo ut præfert' confect' poſtea ſcilt ad deliberacon' gaol' Dnæ Rnæ de Newgate tent' pro com' Midd' præd' apud le Juſtice-Hall in le Old Baily in ſuburbiis civit' London' die Lunæ decimo ſeptimo die Aprilis anno rni dcæ Dnæ Annæ Rnæ Magn' Britanniæ, &c. nono ſupdico coram Samuel' Garrard Bar' Major' civit' Lond' Thoma Parker mil' capital' juſtic' Dnæ Rnæ ad plita coram ipa Rna tenend' aſſign' Edro Ward mil' capital' baron' ſccii dcæ Dnæ Rnæ Robto Tracy ar' un' juſtic' dcæ Dnæ Rnæ de Banco Thoma Bury mil' un' baron' ſccii dcæ Dnæ Rnæ Rico Levett mil' Willo Withers mil' aldris civit' London' Rico Richardſon ar' un' ſervien' ad legem ac al' ſociis ſuis juſtic' dcæ Dnæ Rnæ ad gaolam ipius Dnæ Rnæ de Newgate de priſonar' in eadem exiſten' deliband' aſſign' per manus ſuas propr' delibaver' hic in Cur' de Recordo in form' juris terminand', &c. Et ſuperinde ad præd' deliberacon' gaol' dcæ Dnæ Rnæ de Newgate tent' pro' com' præd' apud Juſtice-Hall præd' dco die Lunæ decimo ſeptimo die Aprilis anno nono ſupdco coram præfat' juſtic' dcæ Dnæ Rnæ ult' noiat & al' ſociis præd' ven' præd' Georgius Purchaſe ſub cuſtod' Rici Hoare mil' & Thomæ Dunch mil' vic' com' præd' (in cuſtod' cujus in gaola de Newgate præd' pantea ex cauſa præd' commiſs' fuit) ad bar' hic duct' in propr' perſon' ſua qui committitur præfat' vic', &c. Et ſtatim de alt' prodicon' præd' in indicament' præd' ſuperius ſpificat ei ſuperius impoit alloquut' qualit' ſe velit inde acquietari idm Georgius Purchaſe dicit qd ipe non eſt inde culpabil' & inde de bono & malo ponit ſe ſuper priam Ideo immediate ven' inde jur' coram præfat' juſtic' dcæ Dnæ Rnæ ult' noiat & al' ſociis ſuis hic, &c. per quos, &c. Et qui, &c. ad recogn', &c. Et jur' juræ illius per præfat' vic' ad hoc impannellat' ſcilt Thomas Sutton Johes Furnes Jones Parſons Joſephus Parſons Willus Hargrave Johes Meard Edrus Boſwell Robtus Breakſpear Ricus Beatknife Ricus Hazzard Francus Higgins & Humfrus Newman exact' ven' qui ad veritat' de & ſup' præmiſs' præd' dicend' elect' triat' & jurat' dicunt ſuper ſacrm ſuu' qd primo die Martii anno regni Dnæ Annæ nunc Rnæ Magn' Britanniæ, &c. octavo multitudo gentiu' & magnus concurſus populi ad numeru' quingent' perſon' modo guerrino armat' & arraiat' videlt gladiis baculis & fuſtibus & aliis armis tam offenſivis qm defenſivis apud paroch' Sci Clement' Dacor' in com' Midd' illicite & proditorie aſſemblat' & congregat' fuit ſub colore & prætextu diruend' & ſpoliand' domos vocat' *Meeting-Houſes*, pro aſſemblacone proteſtan' ſubditor' Dnæ Rnæ diſſentien' ab Ecclia Anglican' pro divin' cultu allocat' & approbat' ſcdm direccon' cujuſdm Act' in Parliamento Dni Willi & Dnæ Mariæ nup' Regis & Reginæ Angl', &c. anno rni ſui primo fact' intitlat' *An Act for exempting their Majeſties Proteſtant Subjects diſſenting from the Church of* England *from the Penalties of certain Laws*; & cum intencon' ad eaſdm domos diruend' & ſpoliand' qdq; diverſe humoi domus in vico vocat' *Fetter-Lane*, & in quodm loco vocat' *Lincoln's-Inn-Fields*, & aliis locis in com' Midd' per populu' ſic ut prefert' aſſemblat' & congregat' ſpoliat' fuer' & ſubſellia Angce *Seats*, & ro ra Angce *Pulpits*, & al' material' eiſdm domibus ſpectan' dirut & in apertis locis infra com' præd' combuit' & cum igne conſumpt' fuer' populo ill' adtunc magnope exultante vociferante & acclamante Et jur' præd' ulterius dicunt ſup' ſacrm ſuum qd magna pars eardm perſonar' ad numeru' trecent' perſon' de concurſu popul' ill' qui ſic ut præfert' prædcam domu' in præd' loco vocat' *Lincoln's-Inn-Fields* ſpoliaſſent & material' inde combuſſiſſent & cum igne conſumpſiſſent per quendm Daniel' Dammaree duct' abinde erga quendam vicu' vocat' *Drury-Lane*, in com' præd' progreſſi fuer' exultantes & clamantes qd ipi oes humoi domos proteſtan' diſſentien' ab Ecclia Anglican' pro aſſemblacon' in eiſdm pro divino cultu ſic ut præfert' allocat' & approbat' diruerent & proſternerent qdq; in progreſſion' ſua præd' int' eos adtunc agitat' fuit qm domu' humoi domor' proxime diruerent & ſpoliarent aliquibus eor' adtunc ſociis ſuis proponen' proſtracon' & ſpoliacon' cujuſdm humoi domus in vico vocat' *Wild-Street* in com' præd' ſituat' exiſten' aliis vero eor' proſtracon' & ſpoliacon' altius humoi domus ſituat' in vico præd' vocat' *Drury-Lane*, pro eo qd præd' domus ſituat' in vico præd' vocat' *Wild-ſt eet*, pervilis & nullius valor' fuit & domus ill' ſituat' in vico præd' vocat' *Drury-Lane*, maxime eſtimabilior ſuper quo inter eos agreat' fuit qd ipi dcam domu' ſituat' in vico præd' vocat' *Drury-Lane*, proxime diruerent & ſpoliarent & ſuperinde ad vicu' ill' ſub ductu præfat' Danielis Dammaree (eodm Daniele populu' ill' ad eundm inſequendum adtunc maxime animante & incitante) progreſſi fuer' exultantes & clamantes *Huzza*, *High-Church and* Sacheverel! & declarantes qd ipi oes domos proteſtan' diſſentien' ab Ecclia Anglican' pro divino cultu ſic ut præfert' allocat' diruerent & præd' domu' in vico præd' vocat' *Drury-Lane*, adtunc freger' & ſpoliaver' & ſubſellia roſtrum & al' material' adinde ſpectan' in publico vico ibm adtunc protuler' ad comburend' & cum igne poſtea in eodm publico vico ac eodm modo quo cætera conſumpſer' Et jur' præd' ultius dicunt ſup' ſacrm ſuu' qd dum perſonæ præd' ſic ut præfert' aſſemblat' & congregat' material' domus ill' in vico præd' vocat' *Drury-Lane*, comburebant idm Georgius Purchaſe in indicament' prædict' menconat' ibm advenit & popul' ill' cum gladio ſuo extract' adtunc defendebat & ad material' domus ill' comburend' eos maxime animabat ſed idm Georgius Purchaſe ante tempus ill' cu' popul' præd' non fuit præſens & adtunc multu' potus fuit Et jur' præd' ultius dicunt ſup' ſacrm ſuu' præd' qd ſatellitibus Dnæ Rnæ per mandatu' ejuſdm Dnæ Rnæ concurſu' populi præd' diſſipare & inſurreccon' ill' ſupprimere in vic' præd' vocat' *Drury-Lane*, adtunc & ibm advenientibus idm Georgius Purchaſe popul' ill' ſic ut præfert' material' domus præd' ibm comburent' ſatellit' ill' repugnare, adtunc & ibm incitabat & in & ſup' capitan' ſatellitiu' præd' cum gladio ſuo extract' inſult' fecit & ſepal' equos ſatellitiu' ill' cum gladio ſuo præd' percuſſit & per quendm adtunc & ibm præſen' admonitus exiſtens qd quicunq; ſatellit' Dnæ Rnæ repugnat perſon' etiam ipius Dnæ Rnæ repugnat adtunc & ibm reſpondendo dixit, *Are you an Enemy to* Sacheverel? Qdq; præd' Georgius Purchaſe anteivit Angce *advanced before* populu' præd' eundm Georgiu' inſequen' contra ſatellit' præd' duxit vociferans & clamans his verbis ſequen' videlt *I am for High-Church and* Sacheverel; *come on, Boys, I will loſe my Life in the Cauſe, and will fight the beſt of 'em.* Et jur' præd' ultius dicunt ſup' ſacrm ſuu' præd' qd generalis exclamaco populi præd' ad oia ſeparal' loca præd' dum ſeparal' domos præd' ſic ut præfert' ſpoliaver' & material' inde combuſſer' univerſalit' fuit *High-Church and* Sacheverel; ſed utru' ſup' tota matia præd' per jur' præd' in form' præd' compert' videbit' juſtic' & cur' hic qd prædict' Georgius Purchaſe culpabilis ſit de alt' prodicon' præd' in indicament' præd' ſpificat' modo & form' prout per indicament' ill' ſuppoit' necne jur' præd' penitus ignorant' & inde petunt adviſament' juſtic' & cur' hic Et ſi ſuper

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tota matia præd' per jur' præd' in form' præd' compert' videbit' juſtic' & cur' hic qd præd' Georgius Purchaſe eſt culpabilis de alt' prodicon' præd' in indicament' præd' ſpificat' modo & form' prout per indicament' ill' ſuppoit' Tunc iidm jur' dicunt ſuper ſacrm ſuu' qd præd' Georgius Purchaſe eſt culpabilis de alt' prodicon' præd' in indicament' præd' ſpificat' modo & form' prout per indicament' præd' verſus eu' ſuppoit' qdq; ipe tempore alt' prodicon' præd' null' huit bon' ſeu catalla terr' ſive tenta ad notic' jur' præd' ſed ſi ſuper tota materia præd' per jur' præd' in form' præd' compert' videbit' juſtic' & cur' hic qd præd' Georgius Purchaſe non eſt culpabilis de alt' prodicon' præd' in indicament' præd' ſpificat' modo & form' prout per indicament' ill' verſus eu' ſuppoit' Tunc iidm jur' dicunt ſuper ſacrm ſuu' qd præd' Georgius Purchaſe non eſt culpabilis de alt' prodicon' præd' in indicament' præd' ſpificat' modo & form' prout ipe idm Georgius pro ſe plitando allegavit nec ſe occone præd' unqm retraxit Et quia præfat' juſtic' & cur' hic de judicio ſuo de & ſup' præmiſs' præd' reddend' nondu' adviſat' Dies inde dat' eſt præfat' Georgio Purchaſe uſq; prox' gaol' delibacon' de Newgate præd' pro com' Midd' præd' tenend' in gaola præd' ſub cuſtod' vic' com' præd' interim ſalvo cuſtodiend' &c. de judicio ſuo de & ſup' præmiſs' præd' audiend' Eo qd præfat' juſtic' & cur' hic inde nondu' &c.

MIDDLESEX, to wit. Be it remembered, That at the Seſſions of our Sovereign Lady the Queen, of Oyer and Terminer, holden for the County of *Middleſex*, at *Weſtminſter*, in the County aforeſaid, upon *Tueſday* the eleventh Day of *April*, in the ninth Year of the Reign of our ſaid Sovereign Lady Queen *Anne*, *&c.* before, *&c.* it is preſented, That *George Purchaſe*, late of the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, Labourer, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but being moved and ſeduced by the Inſtigation of the Devil, entirely withdrawing the cordial Love, and the true, due, and natural Obedience, which true and faithful Subjects of our moſt ſerene and illuſtrious Princeſs, our Sovereign Lady *Anne*, by the Grace of God, of *Great-Britain*, *France*, and *Ireland*, Queen, Defender of the Faith, *&c.* ought, and of Right are bound to bear towards her our ſaid Sovereign Lady the Queen, and conſpiring, and with all his Strength intending to diſturb the Peace and common Tranquillity of this Kingdom, the firſt Day of *March*, in the eighth Year of the Reign of our ſaid Lady the Queen, in the Pariſh of St. *Clement Danes* aforeſaid, in the County aforeſaid, did traitorouſly compaſs, imagine, and intend to levy and raiſe War, Rebellion, and Inſurrection, againſt our ſaid Lady the Queen, within this Kingdom of *Great-Britain*; and to complete and effect his treaſonable Imaginations and Intentions, he the ſaid *George Purchaſe*, on the ſaid firſt Day of *March*, in the eighth Year aforeſaid, with Force and Arms, *&c.* in the ſaid Pariſh of St. *Clement Danes*, in the County aforeſaid, againſt our ſaid Lady the Queen, his true and undoubted Sovereign, with a Multitude of People, to the ſaid Jurors unknown, to the Number of Five Hundred Perſons, armed and arrayed in a warlike Manner, to wit, with Swords, Staffs, and Clubs, and other Weapons, as well offenſive as defenſive, unlawfully and traitorouſly then and there aſſembled, and gathered together, did traitorouſly ordain, prepare, and levy open War againſt our ſaid Lady the Queen, againſt the Duty of his Allegiance, againſt the Peace of our ſaid Lady the Queen that now is, her Crown and Dignity, and againſt the Form of the Statute in that Caſe made and provided.

Wherefore the Sheriff of the County aforeſaid was commanded, that he ſhould not omit, *&c.* but that he ſhould take the aforeſaid *George Purchaſe*, if, *&c.* to anſwer, *&c.* which ſaid Indictment, the ſaid Juſtices of our ſaid Lady the Queen, appointed by the Letters Patent of our ſaid Lady the Queen, under her Great Seal as aforeſaid, afterwards, to wit, at the Gaol-Delivery of our Lady the Queen, of *Newgate*, holden for the County of *Middleſex* aforeſaid, at *Juſtice-Hall* in the *Old-Bailey*, in the Suburbs of the City of *London*, on *Monday* the ſeventeenth Day of *April*, in the aforeſaid ninth Year of the Reign of our ſaid Lady *Anne*, Queen of *Great-Britain*, &c. before Sir *Samuel Garrard*, Baronet, Lord Mayor of the City of *London*, Sir *Thomas Parker*, Knight, Lord Chief Juſtice of our Lady the Queen, aſſigned to hold Pleas before the Queen herſelf, Sir *Edward Ward*, Knight, Lord Chief Baron of the Exchequer of our ſaid Lady the Queen, *Robert Tracy*, Eſquire, one of the Juſtices of the Bench of our ſaid Lady the Queen, Sir *Thomas Bury*, Knight, one of the Barons of the Exchequer of our ſaid Lady the Queen, Sir *Richard Levett*, Knight, Sir *William Withers*, Knight, Aldermen of the City of *London*, *Richard Richardſon*, Eſquire, one of the Serjeants at Law, and others their Companions, Juſtices of our ſaid Lady the Queen, aſſigned to deliver the Gaol of our ſaid Lady the Queen, of *Newgate*, of the Priſoners being in the ſame, did deliver here with their own proper Hands, in the Court of Record, in Form of Law, to be determined, *&c.* and thereupon, at the ſaid Delivery of the Gaol of our ſaid Lady the Queen, of *Newgate*, holden for the ſaid County, at *Juſtice-Hall* aforeſaid, the ſaid *Monday* the ſeventeenth Day of *April*, in the ninth Year aforeſaid, before the ſaid Juſtices of our ſaid Lady the Queen laſt named, and others their Companions aforeſaid, the ſaid *George Purchaſe* came under the Cuſtody of Sir *Richard Hoare*, Knight, and Sir *Thomas Dunch*, Knight, Sheriff of the County aforeſaid, (to whoſe Cuſtody, for the Cauſe aforeſaid, he was before committed to the ſaid Gaol of *Newgate*) being brought to the Bar here in his own proper Perſon, who is committed to the aforeſaid Sheriff, *&c.* and immediately being aſked concerning the High-Treaſon aforeſaid, in the ſaid Indictment above ſpecified, charged upon him as above, in what Manner he would acquit himſelf thereof, the ſaid *George Purchaſe* ſaith, that he is not guilty thereof, and of the Good and Bad thereof putteth himſelf upon his Country: Therefore let a Jury immediately come before the ſaid Juſtices of our ſaid Lady the Queen laſt mentioned, and others their Companions here, *&c.* by whom, *&c.* and who, *&c.* to take Cognizance, *&c.* and the Jurors of that Jury by the ſaid Sheriff for this Purpoſe impannelled, that is to ſay, *Thomas Sutton*, *John Furneſs*, *John Parſons*, *Joſeph Parſons*, *William Hargrave*, *John Meard*, *Edward Boſwell*, *Robert Breakſpear*, *Richard Beatknife*, *Richard Hazzard*, *Francis Higgins*, and *Humphry Newman*, being called, appeared, who being choſen, tried, and ſworn to ſpeak the Truth of and upon the Premiſſes aforeſaid, upon their Oaths do ſay:

That upon the firſt Day of *March*, in the eighth Year of the Reign of our Lady *Anne*, Queen of *Great-Britain*, &c. that now is, a Multitude of Men, and a great Concourſe of People, to the Number of Five Hundred Perſons, armed and arrayed in a warlike Manner, to wit, with Swords, Staffs, Clubs, and other Arms, as well offenſive as defenſive, did unlawfully and traitorouſly aſſemble and meet together in the Pariſh of St. *Clement Danes*, in the County of *Middleſex*, under Colour and Pretence of pulling down and rifling the Houſes called Meeting-Houſes, allowed and approved for the aſſembling of the Proteſtant Subjects of our Lady the Queen, diſſenting from the Church of *England*, to perform divine Worſhip, according to the Direction of an Act made in the Parliament of our Lord and Lady *William* and *Mary*, late King and Queen of *England*, &c. in the firſt Year of their Reign, intituled, *An Act for exempting their Majeſties Proteſtant Subjects diſſenting from the Church of* England *from the Penalties of certain Laws*, and with Intent to pull down and rifle the ſame Houſes; and that ſeveral ſuch Houſes in a Street called *Fetter-Lane*, and in a certain Place called *Lincoln's-Inn-Fields*, and in other Places in the County of *Middleſex*, were rifled by the People ſo as aforeſaid aſſembled and gathered together; and that the Seats and Pulpits, and other Materials belonging to the ſaid Houſes, were pulled down, and burnt, and conſumed with Fire, in open Places within the ſaid County, the People there preſent greatly rejoicing, ſhouting, and hallooing: And the ſaid Jurors, upon their Oaths, do further ſay, that a great Part of the ſaid Perſons, to the Number of Three Hundred Perſons of that Concourſe of People, who, as aforeſaid, had rifled the ſaid Houſe, in the Place aforeſaid call'd *Lincoln's-Inn-Fields*, and had burnt and deſtroyed with Fire the Materials therein, being led from thence by one *Daniel Dammaree*, proceeded towards a certain Street, in the County aforeſaid, called *Drury-Lane*, hallooing and crying out, that they would pull down and level with the Ground all the ſaid Houſes allowed and approved as aforeſaid for the aſſembling of the Proteſtants diſſenting from the Church of *England*, for divine Worſhip; and that in their March aforeſaid, it was then debated among them, which Houſe of the ſaid Houſes they ſhould next pull down and rifle, ſome of them, at that Time, propoſing to their Fellows the pulling down, and rifling a certain Houſe of that kind, ſituate and being in a Street, call'd *Wild-Street*, in the County aforeſaid; but others adviſing the pulling down and rifling another Houſe of that kind, ſituate in the Street aforeſaid, called *Drury-Lane*, for this Reaſon, that the ſaid Houſe, ſituate in the Street aforeſaid, called *Wild-Street*, was mean, and of no Value, and that Houſe ſituate in the Street aforeſaid, called *Drury-Lane*, was very conſiderable; whereupon, it was agreed between them, that they would next pull down and rifle the ſaid Houſe, ſituate in the Street aforeſaid, called *Drury-Lane*; and thereupon they went to the ſaid Street, being led by the ſaid *Daniel Dammaree*, (the ſaid *Daniel Dammaree* at that Time greatly exciting and encouraging the People to follow him) ſhouting, and crying, *Huzza! High-Church and* Sacheverel! and declaring that they would pull down all the Houſes allowed, as aforeſaid, to the Proteſtants diſſenting from the Church of *England*, for religious Worſhip; and did then break and rifle the ſaid Houſe, in the Street aforeſaid, call'd *Drury-Lane*, and did then bring out the Seats, Pulpit, and other Materials thereto belonging, into the publick Street, there to be burnt, and afterwards did conſume them with Fire in the ſame publick Street, and in the ſame Manner as the reſt were conſumed. And the Jurors aforeſaid, upon their Oaths, further ſay, That whilſt the ſaid Perſons, aſſembled and gathered together as aforeſaid, did burn the Materials of that Houſe in the Street aforeſaid, called *Drury-Lane*, the ſaid *George Purchaſe*, in the Indictment aforeſaid mentioned, came there, and with his Sword drawn did then defend the ſaid People, and did greatly encourage them to burn the Materials of the ſaid Houſe; but the ſaid *George Purchaſe*, before that Time, was not preſent with the ſaid People, and at that Time was much in Drink: And the ſaid Jurors, upon their Oaths aforeſaid, further ſay, That the Guards of our Sovereign Lady the Queen, then and there coming by the Command of our ſaid Lady the Queen, to diſperſe the Concourſe of People aforeſaid, and to ſuppreſs that Inſurrection in the ſaid Street called *Drury-Lane*, the ſaid *George Purchaſe* did then and there incite the People, then, as aforeſaid, burning the Materials of the ſaid Houſe, to reſiſt the ſaid Guards, and did make an Aſſault in and upon the Captain of the ſaid Guards, with his Sword drawn, and with his ſaid Sword did ſtrike ſeveral Horſes of the ſaid Guards, and being admoniſhed by one then and there preſent, that whoever reſiſteth the Guards of our Lady the Queen, reſiſteth alſo the Perſon of our ſaid Lady the Queen; he then and there, by way of Anſwer, ſaid, *Are you an Enemy to* Sacheverel? And that the ſaid *George Purchaſe* advanced before the ſaid People following, he the ſaid *George* led them againſt the Guards aforeſaid, hallooing, and crying out in the following Words, that is to ſay, *I am for High-Church and* Sacheverel; *Come on, Boys; I will loſe my Life in the Cauſe, and will fight the beſt of them:* And the Jurors aforeſaid, upon their ſaid Oaths, do further ſay, That the general Cry of the People aforeſaid, at all the ſeveral Places aforeſaid, whilſt they rifled the ſaid ſeveral Houſes, as is before ſet forth, and burnt the Materials of the ſame, was univerſally, *High-Church and* Sacheverel.

But whether, upon the whole Matter aforeſaid, found by the ſaid Jurors in Form aforeſaid, it ſhall appear to the Juſtices, and the Court here, that the aforeſaid *George Purchaſe* be guilty of the High-Treaſon aforeſaid, in the ſaid Indictment ſpecified, in Manner and Form as by the ſaid Indictment is ſuppoſed, or not, the Jurors aforeſaid are entirely ignorant, and therefore deſire the Advice of the Juſtices, and of the Court here; and if, upon the whole Matter aforeſaid, found by the ſaid Jurors, in Form aforeſaid, it ſhall appear to the Juſtices, and to

the Court here, that the ſaid *George Purchaſe* is Guilty of the High-Treaſon aforeſaid, in the ſaid Indictment ſpecified, in Manner and Form as by the ſaid Indictment is ſuppoſed, then the ſaid Jurors, upon their Oaths, do ſay, That the ſaid *George Purchaſe* is Guilty of the High-Treaſon aforeſaid, in the ſaid Indictment ſpecified, in Manner and Form as by the ſaid Indictment againſt him is ſuppoſed; and that he, at the Time of the High-Treaſon aforeſaid, had no Goods or Chattels, Lands or Tenements, to the Knowledge of the Jurors aforeſaid; but if, upon the whole Matter aforeſaid, found by the ſaid Jurors in Form aforeſaid, it ſhall appear to the Juſtices, and to the Court here, that the ſaid *George Purchaſe* is not guilty of the High-Treaſon aforeſaid, in the Indictment aforeſaid ſpecified, in Manner and Form as by the ſaid Indictment againſt him is ſuppoſed; then the ſaid Jurors do ſay, upon their Oaths aforeſaid, that he the ſaid *George Purchaſe* is not guilty of the High-Treaſon aforeſaid, in the Indictment aforeſaid ſpecified, in Manner and Form as he the ſaid *George Purchaſe*, for himſelf, by pleading, hath alledged; nor did he ever withdraw himſelf for the Occaſion aforeſaid: And becauſe the ſaid Juſtices and this Court are not yet adviſed of giving their Judgments of and upon the Premiſſes, therefore a Day is given to the ſaid *George Purchaſe*, to the next Gaol-Delivery of *Newgate* aforeſaid, for the County of *Middleſex* aforeſaid, to be detained in the Gaol aforeſaid, under the Cuſtody of the Sheriff aforeſaid, in the mean Time, ſafely to be kept, &c. to hear their Judgment of and upon the Premiſſes aforeſaid, becauſe the ſaid Juſtices and this Court are not yet, &c.

The following is the Argument of the Chief Juſtice, written with great Clearneſs of Style, and Strength of Reaſon.

AS to *Dammaree* and others, who pulled down or rifled Meeting-Houſes, it is the unanimous Opinion of all the Judges, That they were guilty of High-Treaſon; and the Species of that Treaſon is, the levying War againſt the Queen.

For, when a Multitude is aſſembled, and Force uſed, not for any private End or Revenge, but upon a Pretence which is publick and general, it has in all Ages been adjudged a levying War againſt the Crown, and High-Treaſon.

Several Caſes have been at ſeveral Times, in the Reigns of *Henry* VIII. Queen *Elizabeth*, King *Charles* I. and King *Charles* II. under the Conſideration of the Judges; and particularly ſo, if a Multitude aſſembled with an Intent,

And actually with Force attempt,
To remove evil Councillors,
Surprize a Privy-Councillor,
Lay violent Hands on a Magiſtrate,
Expulſe Strangers,
Alter Laws,
Make Reformation,
Set Price on Victuals,
Inhance Salaries or Wages,
Pull down Incloſures,

If the Deſign be general; and not only—— { For a private Revenge / to redreſs a private Injury.

Break Priſons generally,
Pull down Bawdy-Houſes.

And in all theſe Caſes the Perſons concerned therein, though they had no ill Intention againſt the Perſon of the King or Queen, have been held guilty of levying War againſt the King or Queen: For theſe Inſurrections are of a publick Nature, and Invaſions of the Royal Authority. And this Inſurrection, with Intent to pull down Meeting-Houſes tolerated by Law, is of a more publick Nature and Concern than many of thoſe, and a higher Violation of the Publick Peace; and therefore is, in the Eye of the Law, Rebellion, and levying War againſt Her Majeſty.

As to the particular Caſe of *Purchaſe*, the Priſoner at the Bar, three of the Judges, my Lord Chief-Juſtice *Trevor*, my Brother *Powell*, and Brother *Price*, are of Opinion, That as this Verdict is found, he is not guilty of High-Treaſon.

But all the reſt of the Judges are of Opinion, That upon this Verdict he is guilty of High-Treaſon.

For this Inſurrection, with an Intent to pull down the Meeting-Houſes, being High-Treaſon, that is, being a Rebellion, and in the Eye of the Law a levying War againſt her Majeſty;

It appears, that the Deſign of this Rebellion was to pull down and rifle Meeting-Houſes; that the Manner of executing that Deſign was by pulling down the Pulpits, Pews, and other Materials of the Meeting-Houſes, and burning them with great Triumph in publick Places; and when they had burnt the Materials of one, then to go on to another.

It appears, that when *Purchaſe* came to the Perſons engaged in this Deſign, they were ſtill continued aſſembled upon the ſame Deſign; and though the pulling down of the Meeting-Houſe in *Drury-Lane* were over, it only had the Preference of that in *Wild-Street*, their whole Work of pulling down Meeting-Houſes was not over, the whole Deſign of this Rebellion was not yet accompliſhed, but they were proceeding in the Method in which they had begun, and were burning the Materials of this Meeting-Houſe in *Drury-Lane*, and when that was done, they would be at Liberty to go on to another, and ſo on 'till all ſhould be finiſhed, and all the Meeting-Houſes deſtroyed: So that their Rebellion was then continuing.

Purchaſe comes up to them, joins them that were thus engaged in an Act of Rebellion; not only encourages them to burn the Pews and Pulpit, but draws his Sword in Defence of theſe Rebels, then, in the Eye of the Law, in War againſt their Queen: And when the Guards came, by Her Majeſty's ſpecial Command, to diſperſe them, that is, to ſtop this Rebellion, and put an End to this War, he actually engages the Guards, makes a Paſs at the Captain of the Guards, and pokes at other of their Horſes; and ſo did all in his Power to keep this Rebellion on foot, in Oppoſition to Her Majeſty's Forces: And when a Perſon joins himſelf to thoſe engaged in Rebellion, and fights in Defence of them, while they are in the Act of Rebellion, this, we think, involves him in the Guilt of this Rebellion; and, by thus doing, he is one of thoſe that wages War againſt the Queen.

It is not indeed found in expreſs Words by the Verdict, that he aided and aſſiſted theſe Rebels, but 'tis found in effect; for 'tis found that he defended them with his drawn Sword, and he fought againſt the Guards that were ſent to diſperſe them: Nay, here is more found than Aid and Aſſiſtance implies; for a Man is properly ſaid to be aiding and aſſiſting thoſe that make War, if he ſupply them with Arms or Proviſions, or otherwiſe contributes to their Aſſiſtance, though himſelf is at a Diſtance; but here, with Sword in Hand, he is found actually to attack the Guards, and ſo himſelf joins in making War, and is more properly an Actor, than an Aider or Aſſiſter.

It is not found in the Verdict, that he knew of the Intent to pull down Meeting-Houſes, and we take it not to be neceſſary.

1. Here is Matter found, that carries a violent Preſumption that he did know it.

The Notoriety of the pulling down the Meeting-Houſes in ſo publick a Manner; his joining to ſuch a tumultuous Aſſembly; his encouraging them to burn the Materials; his Eagerneſs in defending this Aſſembly; his uſing the Word, which appeared to be the Watch-Word at all the ſeveral Meeting-Houſes, *High-Church and* Sacheverel, declaring himſelf to be for High-Church and *Sacheverel*, which, if it had no other Meaning, was yet the Cant Word of theſe Rebels; his taking upon him ſo far the Knowledge of the Cauſe, that he declared he would loſe his Life for it; and uſing that as an Inducement, when he called on the People that were engaged in the Cauſe of pulling down Meeting-Houſes, to follow him againſt the Guards, ſeem very ſtrongly to import his Knowledge.

2. We are of Opinion, That if a Man knowingly join with others in breaking the Peace, and actually fights the Guards in their Defence; if in that Breach of the Peace they were Rebels, he is ſo too, whether he knew them to be ſo or not.

In Rebellions it is frequent that few are let into the real Deſign, but yet all that join in it are guilty of the Rebellion.

It is not for a Man to fight for Perſons actually in Rebellion, and ſay, He meant indeed to break the Peace, but did not deſign High-Treaſon; he ſhould have thought of that before he joined thoſe he ſaw engaged in an unlawful Act; if he will knowingly break and contemn the Laws, he muſt be content to ſuffer the ſame Puniſhment with thoſe he had joined in breaking them.

And this is no new Point; this was the Opinion of all the Judges of *England*, in the Caſe of the Earl of *Eſſex*, and Earl of *Southampton*, in Queen *Elizabeth*'s Time; the Earl of *Eſſex* having a Deſign to remove ſome of the Councillors from about the Queen, and marching with ſeveral armed Men for that Purpoſe: All the Judges held, That all that went with him out of his Houſe, and ſo adhered to the Earl of *Eſſex*, who was guilty of High-Treaſon, were themſelves guilty of High-Treaſon too, though they knew not his Intent.

Purchaſe received her Majeſty's moſt gracious Pardon.

LIX. *The Trial of* Edward Arnold, *for Felony (in maliciouſly and wilfully ſhooting at, and wounding, the Right Honourable the Lord* Onslow), *at the Aſſizes held at* Kingſton *upon* Thames, *in* Surrey, March 20, 1723-4, *before the Honourable* Robert Tracy, *Eſq. one of his Majeſty's Juſtices of the Court of* Common-Pleas. 10 Geo. I.

Rex verſus Arnold.

Edward Arnold *brought to the Bar.*

Surry ſſ. JUR' pro Domino Rege ſup' Sacrum ſuum preſentant quod Edwardus Arnold nup' de Paroch' Sci Nicholai Guildford aliis Guldeford in Com' Surr' predict' poſt primum diem Junii Anno Dom' Millimo ſeptingenteſimo viceſimo tertio ſcilt viceſimo octavo die Auguſti anno Regni Domini nri Georgii Dei Gratia Magne Britannie Franc' & Hibernie Regis fidei Defenſoris, &c. decimo vi & armis, &c. apud Paroch' Sci Nicholai Guildford aliis Guldeford predict' in Com' Surr' pred' in & ſup' prehonorabil' Thomam Dominum Onſlow Baron' Onſlow de Onſlow in Com' Salop & de Clandon in Com' Surrey in pace Dei & dicti Domini Regis adtunc & ibidem exiſten' illice felonice voluntarie malitioſe & ex malicia ſua precogitat' inſult' fecit et adtunc & ibidem Idem Edrus Arnold quoddam Tormentum Angce *Gun* valent quinq' ſolid' cum pulvere Bombardino Angce *Gunpowder* & plumbeis Globulis Angce *Leaden Shot*, adtunc & ibm' onerat' quod quidm' Tormentum ipſe idm' Edrus in manibus ſuis adtunc & ibm' habuit & tenuit in contra ad & verſus prefat' prehonorabil' Thomam Dominum Onſlow (eodem prehonorabil' Thoma Domino Onſlow in alta Regia via apud Paroch' Sci Nicholai Guildford als Guldeford predict' in Com' Surr' predict' adtunc exiſten') adtunc & ibm' illice felonice volantarie malitioſe & ex malitia ſua precogitat' diſploſit et exoneravit Angce *did ſhoot*, pinde adtunc & ibm' dans eidm' Thome Domino Onſlow in & ſup' ſiniſtrum humerum ipſius Thome

Thome Domini Onſlow unum grave vulnus latitudinis Sex Pollicum & profunditat' Duorum Pollicum contra pacem dicti Domini Regis nunc Coron' & Dignitat' ſuas, &c. nec non contra formam Statut' in humoi caſu edit' & provis'.

Clerk of Arraigns. How ſay'ſt thou, *Edward Arnold*, Art thou Guilty of the Felony whereof thou ſtandeſt indicted, or Not Guilty?

Priſoner. Not guilty.

Cler. of Arr. Culprit, How wilt thou be tried?

Priſoner. By God and my Country.

Cler. of Arr. God ſend thee a good Deliverance.

Cler. of Arr. You *Edward Arnold*, the Priſoner at the Bar, hearken to what is ſaid to you. Thoſe good Men that are now called, and do here appear, are thoſe that are to paſs between our Sovereign Lord the King and you, upon your Life and Death; if therefore you will challenge them, or any of them, you muſt challenge them as they come to the Book to be ſworn, before they are ſworn.

(*Then the Jury were ſworn.*)

Cler. of Arr. Count theſe.

Cryer. Are you all ſworn, Gentlemen?

Jury. Yes.

Cler. of Arr. Make a Proclamation.

Cryer. O Yes; if any of you can inform my Lord the King's Juſtice, the King's Attorney, or Solicitor General, of *any Treaſon, Murder, Felony, or other Miſdemeanor, committed by the Priſoner at the Bar*, come forth, and you ſhall be heard; for the Priſoner at the Bar now ſtands upon his Deliverance: And all Perſons bound by Recognizance to proſecute the Priſoner, come forth and proſecute, or you'll forfeit your Recognizances.

Cler. of Arr. Edward Arnold, Hold up thy Hand. Gentlemen of the Jury, look upon the Priſoner, and hearken to his Cauſe; he ſtands indicted, &c. *ut ſupra*; upon which Indictment he hath been arraigned, and pleaded Not Guilty; your Charge is to enquire whether he be Guilty of the Felony whereof he ſtands indicted, or not Guilty.

Mr. *Hungerford.* I only beg Leave to trouble your Lordſhip with one Word in this Buſineſs. Your Lordſhip hath been applied to by Petition, and an Affidavit thereto annexed, in reſpect to the Man's Circumſtances, that he may have a Solicitor by him to call his Witneſſes only. I pray they may be read.

Mr. Juſtice *Tracy.* Read the Petition and Affidavit.

Cryer. To the Honourable *Robert Tracy*, Eſq. *&c.* The humble Petition, *&c.*

Mr. *Hungerford.* My Lord, all that we deſire is, that he may be by him, to tell and to aſſiſt him in calling for his Witneſſes.

Mr. Serjeant *Cheſhyre.* My Lord, I am commanded to attend this Service, as I have the Honour to be of the King's Counſel; and I apprehend nothing is expected from me of a Conſent to a Thing of this Kind. Your Lordſhip is of Counſel for all the Priſoners, who by Law can have none, as this Man can't have any. This is a Deſign to foreſtall the Juſtice this Man is coming under, and to anticipate it. My Lord, if any thing appears in the Nature of this Man's Defence and his Behaviour, your Lordſhip will take care that the Officer calls for what Evidence is proper. Nothing hath appeared in this Man's Conduct, as I am informed: He hath been called to his Trial; he hath pleaded in the common Method as other People do; and the Man, to my Sight, ſeems as ſenſible as myſelf, or any Perſon in Court: Therefore, when nothing elſe will do, they muſt have Recourſe to the Method of this Affidavit. What is this Affidavit? An Affidavit of two Brothers, That he now is, and hath been, *&c.* which is more to blacken the Proſecution than any thing elſe. If they thought him ſo, why hath he not been reſtrained, and a Commiſſion of Lunacy taken out? There is no Pretence of that. As this Perſon is charged with ſo horrid a Fact, I cannot conſent to this. I am ſure your Lordſhip will make no new Precedent. And pardon me, my Lord, if I ſay your Lordſhip is of Counſel for the Priſoner; and 'till it doth appear that he is lunatic, your Lordſhip will make no new Precedent.

Mr. Serjeant *Whitaker.* My Lord, I am likewiſe of Counſel for the King; and I muſt needs ſay, in the little Experience I have had, I never ſaw any Thing of this Nature offered. I have been attending often on Indictments at the *Old-Bailey*, and elſewhere, and ſometimes when mad People came on to Trial, and have been really in that Condition that the Perſons would fancy the Priſoner to be; but ſuch an Attempt as this I never knew before. Your Lordſhip and the Court will, when a Man pleads Not Guilty, do Right, and inquire after this Matter: If there is any Pretence for Inſanity, it is his Defence; but that the Counſel for the King ſhould give it up, and yield that he is ſo, cannot be expected; for by agreeing to this Petition we do.

It is very extraordinary to hear Counſel ſpeaking till they are aſſigned; but as they have taken that Liberty, I don't blame them; every one is to do the beſt for his Client: But I hope, for precedent Sake, and for Juſtice Sake, there ſhall not the leaſt Countenance be given to this Matter; I take it we can't conſent to it. By Law the Priſoner cannot have Counſel; therefore I hope this Petition ſhall be rejected.

Mr. Serjeant *Comyns.* I ſhall not trouble your Lordſhip; it is a Matter ſo new and ſurpriſing, that I need not add to what hath been already ſaid, but ſhall ſubmit it to your Lordſhip.

Mr. *Marſh.* My Lord, I beg your Lordſhip will indulge me one Word in this Matter. The Attempt they make is to have a Lunatick aſſiſted in his Trial. With Submiſſion, I don't know any Aſſiſtance he is capable of: for if really a Lunatick, he is inſenſible, ſo as to receive no Aſſiſtance, ſuppoſing he committed the Fact.

As to calling his Witneſſes to prove this Inſanity, theſe very Brothers, if they ſtand in any Part of the Court, may equally call them, as well as if they had any Aſſiſtance of an Attorney or Solicitor to ſtand by him. I would not fling any Imputation on any Perſon; but if the Man hath a Deſign to act a mad Part, as the Deſign will appear, if he be really ſenſible, then he is capable of receiving the Inſtructions of the Agent, if he happens to be out, how to behave himſelf mad; ſo that no good, but a very bad Uſe may be made of it. As to the Conſent, we can't do it. We think as to the Subject-Matter of the Petition, your Lordſhip can't grant it, from the Inconveniencies that may attend it.

Mr. *Hungerford*, I ——

Mr. Serjeant *Whitaker.* My Lord, we oppoſe his ſpeaking.

Mr. *Hungerford.* I was going ——

Mr. Juſtice *Tracy.* It muſt not be.

Mr. *Hungerford.* My Lord, I know my Duty ſo well, that I ſubmit: But I ſee your Lordſhip hath more Temper and Lenity. I believe it is indifferent what Part of the Court his Brothers are in, if his Solicitor ſtand by him. I know no other uſe to be made of it than to call his Witneſſes.

Mr. Juſtice *Tracy.* I can't do it with any Conſent. What my Brother ſays, the Law is clear in. It is my Duty to give him all the Aſſiſtance I can; and that I will do.

Mr. *Hungerford.* Let the Names be handed to ſomebody to call the Witneſſes.

Mr. Serjeant *Cheſhyre.* We that are Counſel for the King will do nothing that is hard.

Mr. Serjeant *Whitaker.* No, I never will, while a Man's Life is at ſtake. None of us will do any thing that is hard.

Mr. Juſtice *Tracy.* I don't believe you will.

Mr. *Ballard.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, this is an Indictment at the Suit of the King, againſt *Edward Arnold*; and the Indictment ſets forth, That *Edward Arnold*, late of the Pariſh of, *&c.*

To this Indictment he hath pleaded Not Guilty; if we call our Witneſſes, and prove the Indictment, you will find him Guilty.

Mr. Serjeant *Cheſhyre.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am, in this Caſe, Counſel for the King. The Priſoner at the Bar, *Edward Arnold*, ſtands indicted upon an Act of Parliament of the laſt Seſſion of Parliament; and, Gentlemen, it is for maliciouſly and wilfully ſhooting the Lord *Onſlow*, and wounding him, as he apprehended, and as will appear from the Evidence, mortally. It pleaſed God to preſerve him; but notwithſtanding that, the Fact by him committed is Felony, without Benefit of Clergy.

And, Gentlemen, though we need nothing to juſtify a Law, made neceſſary from Inſtances in your own Neigbourhood, yet, give me leave to tell you, it is but reviving the old Law of *England*; for by that, if a Perſon did an Act to another, whereby Death might enſue, notwithſtanding the Party did not die in a Year and a Day, it was Felony. We have Inſtances of this ſo early as *Edward* the Second, and *Edward* the Third; but I own, of later Years this hath been diſcontinued, and held an Offence puniſhable at Diſcretion, yet not puniſh'd with Death, till this Act I have mentioned, which is but only the old Law of *England* revived. And if the Barbarity of People made it neceſſary, it became the Legiſlature to make it Felony, without Benefit of Clergy.

Gentlemen, the Fact this Perſon hath been guilty of, was committed in this Manner. On the twenty-eighth Day of *Auguſt* laſt, within leſs than three Months after paſſing the Act, as if the Fellow had ſtudied, and been fond of being the firſt inſtance of Cruelty that ſhould ſuffer by this Act, this noble Lord, mentioned in the Indictment, and upon whoſe Life this Perſon had a deliberate Deſign, had been out with Gentlemen a hunting a Fox-Chace: Upon his returning down a Lane in the King's Highway, as will appear by the Evidence, one Mr. *Flutter* was on my Lord's Left Hand, and Mr. *Fawks* almoſt on his Right, my Lord in the Middle; Mr. *Flutter* then obſerving the Priſoner at the Bar coming up with his Gun cock'd, and the Muzzle towards him, aſked him, What was the meaning of his coming in that manner, with his Muzzle of his Gun, and his Gun cock'd? The Man makes no Anſwer, goes on a Pace or two, turns back, and takes Aim, and ſhoots at this noble Lord. The Blaſt being ſo near, it ſtruck him off his Horſe, wounded him in a cruel manner: It proved (it pleaſed God) not mortal, and that becauſe he could not buy ſuch Shot as he deſign'd. My Lord, it muſt naturally ſtrike Horror to thoſe about him, who had no Apprehenſions of this kind, to find the noble Perſon thus ſhot. You will eaſily believe, they alighted to his Aſſiſtance, they got him to the Bank; he cry'd, The Villain hath kill'd me; as well he might: Some of the Company obſerving the Fellow, he went on his way thirty or forty Paces: They overtook him, and he reſiſted at firſt, but being brought to the noble Lord, whom he had thus wounded, he makes no Excuſe; he ſeemed to ſtruggle, according to the Account I have in my Brief; he ſeem'd to be pale and livid, and to have great Rancour, and aimed, with the Musket, to do *that* that the Shot had not done; but that, you may eaſily imagine, was prevented.

Gentlemen, one would wonder how a Thing of this kind could enter into his Head; but upon enquiry, this cruel, barbarous Man hath meditated on this in his Thought for ſome time; and now, after Facts are done, People are apt to make Diſcoveries, and they knew further than they knew before. One would be apt to enquire, What could be the Occaſion of this? One would think this noble Lord had abuſed and injured this Man to the laſt Degree; ſo far from that, that this noble Lord was unknown to the Man; the Man did not know him, but was forced to ſeek Opportunities to know this noble Lord, that he might ſeek this Revenge. It is not properly Revenge, becauſe Revenge is a Return to an Injury, but here was no Injury done this Man by my Lord; my Lord did not know him, nor, for aught I know, the Man did not know my Lord. But how then came this about? According to the Tenor of his Confeſſion, it aroſe from the moſt wicked Things. This noble Lord is known to you all, he hath always appeared in the Service of his Country, an Aſſertor of the Liberties thereof, always endeavoured to ſupport the preſent Government, in the Houſe of *Hanover*, and is for the Proteſtant Religion, againſt Rebels, and for ſuppreſſing Clubs, and Places of Meeting for People's wicked Enterprizes; and if that be a Fault, I hope it is a Fault moſt of you are guilty of, and will be guilty of; that you are for aſſerting the Liberties of your Country and your Religion, and for ſupporting the Crown; and if this Man is to be believed, the People had inſpired him, brought him to a Pitch of Enthuſiaſm, I don't know what to call it, that my Lord was an Enemy to his Country, and he thought he ſhould do God and his Country

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try good Service, by deſtroying him: Hence it is neceſſary to ſhew what Evidence we have to open to you, and tell you what Preparation (it comes out) that this Fellow made; and it is very proper, becauſe that perfectly throws aſide any of the Pretences whereby to throw a Duſt in your Eyes, to extenuate the Crime, that he had acted like a Madman; he had a ſteady and reſolute Deſign, and uſed all proper Means to effect it.

Gentlemen, though he acted like a wicked Man, void of Reaſon, you will have little Reaſon to think he acted like a Madman.

Every Man that ſo departs from Reaſon, every wicked Man may be ſaid to be a Madman; but I hope that ſhall not ſkreen all that ſo act, and free and exempt them from Puniſhment.

My Lord, the Morning this happened he went to the Houſe of one *Smith*, and had a Quarter of a Pound of Powder, and a Pound of Shot; and the Perſon directed them to No. 2. and gave him that Shot which was a larger Sort than he uſed to have: And it ſeems he is a Markſman, as you will hear; it was always his Buſineſs to aim at the Head.

He had the Powder and the Shot; and that Morning he was met by one, who hearing him diſcharge his Gun, aſked what he had been doing, what he had killed, as you will hear from one of the Witneſſes: Says he, I only did it to diſcharge my Gun. Gentlemen, this is to ſhew that the Purpoſe was ſteady in him, and he would meet with no Diſappointment, but that his Purpoſe might take Effect. You know, a Gun that hath been charged ſome Time, and laid by, ſome Wet or Damp may happen to it to prevent its going off; in order to hinder that, he firſt diſcharges his Gun, and then loads again, that he might be ſecure of its going off. And after he had thus prepared himſelf, the next Thing was to be apprized which Way my Lord was gone, which Way the Dogs went: He was aſked the Reaſon, Are you going a hunting? He falls out into a Rage, that my Lord *Onſlow* was an Enemy to his Country; and if he could meet him, he would ſhoot him. Within a few Minutes afterwards this Noble Lord with his Company, as I have mentioned, came by. The Man being thus prepared, diſcharged his Gun, and executed his wicked Deſign. My Lord, this is the Nature of the Thing; and this coming to his Maſter's Ears, he could not but be concerned that thoſe who appeared eminent and zealous in his Service ſhould meet with ſuch Treatment: Therefore his Majeſty hath given Directions to have his own Servants appear in this Proſecution, to ſee that Right be done: And if we make out this to be the Fact, there is no Need of Rhetorick or Flouriſh of Words to deceive you, nor I believe of any Thing to work up your Paſſions, or to perſuade you to do Right between the King and the Priſoner; which is all we deſire.

Mr. Serjeant *Whitaker*. May it pleaſe your Lordſhip, and you, Gentlemen of the Jury, I am Counſel in this Caſe for the King; and though we have the Honour to ſerve the King, yet we deſire nothing but according to the calm Rules of Juſtice. If the Evidence ſatisfy you, that this Perſon, this Man, is guilty, then we expect you find him ſo; if it is not ſufficient, nothing ſaid by us ſhould influence you to do an Injury: Therefore whether the Man is guilty, and a Proof of that is the Matter which is to be laid before you, we won't uſe any Manner of Perſuaſion one Way or other, but plainly lay the Fact before you.

Gentlemen, this Man is indicted upon an Act of Parliament paſſed the laſt Seſſions; and this Act of Parliament every body thinks a neceſſary Act; and if ſo, it is a juſt and good Act; and if it be juſt and good, it is fit it ſhould be put in Execution when it is tranſgreſſed. Gentlemen, I ſhall take up little more of your Time than only to ſtate one or two Facts, which we ſhall farther lay before you.

When the Wound was given to this Noble Lord, there was ſome Diſcourſe with him about it; and among the reſt one Gentleman, you will obſerve, who was in Company, and riding by my Lord *Onſlow*, aſked him, How came it to paſs he had not ſhot him? Sir, ſays he, you are an innocent Man. This we make uſe of for theſe two Purpoſes: The one to ſhew that he had particular Malice againſt my Lord *Onſlow*; upon what Occaſion hath been opened by my Brother, and I ſhall not repeat it: The other, to ſhew that this was done with great Deliberation, and done againſt this Noble Lord. Gentlemen, then further, when it comes to be inquired of him afterwards, when he ſeemed to be cool, How came you to do this? and, It's Pity he ſhould be guilty of ſuch an Act; he ſays, Have no Concern for me; I muſt anſwer for it. Gentlemen, theſe Things ſhew that he had no Manner of Remorſe, not the leaſt. One would have thought, in caſe of Paſſion and Revenge, wher People had vented their Malice, they would come to repent, and be concerned; but inſtead of that, it appears, by his Diſcourſe afterwards, he had not the leaſt Concern or Remorſe.

Then as to his Preparation for this Fact, it had all the Deliberation in it as could be: He goes to a Shop where he uſed to buy his Powder and Shot; but they happen not to provide him with ſo large a Shot as he expected; he at that Time aſked for the largeſt Shot; the Maſter of the Houſe was not within, but the Miſtreſs was; ſays ſhe, Go and fetch No. 2, which proved not to be ſo large as he would have had. No. 2 is looked out for him, and he buys a Quarter of a Pound of Powder and a Pound of this Shot.

This Evidence we ſhall give, and add to what hath been opened already; and then we ſhall leave it to your Conſciences and your Judgments, whether we have not ſufficiently proved the Charge in the Indictment; and if we have, we ſhall appeal to your Judgments, and to your Conſciences, what Verdict to bring in.

Mr. Serjeant *Comyns*. My Lord, we ſhall beg leave to call our Witneſſes.

Mr. Flutter *ſworn*.

Mr. Serj. *Cheſhyre*. Sir, will you tell my Lord and the Jury—Give an Account of what paſſed when this Fact was committed.

Mr. Juſtice *Tracy*. Bid the Priſoner come up.

King's Counſel. We deſire he may.

(*Brought up accordingly nearer to the Court.*)

Mr. Juſtice *Tracy*. (*To the Priſoner.*) As all the Witneſſes come, if you have any Queſtion to aſk, put it to me, and I will aſk your Queſtion for you; I will give you all the Aſſiſtance that lies in my Power.

Mr. *Flutter*. As we were coming back from Hunting with my Lord *Onſlow*, we came into a narrow Lane, a ſandy Lane near *Guildford*; my Lord *Onſlow* was on my right Hand, I was even with him; I ſaw a Man coming up towards us; this Man, the Priſoner; and I ſaw he had his Gun cocked; he met us.

Mr. Serj. *Cheſhyre*. Did you ſay any Thing to him?

Mr. *Flutter*. When he came to my Horſe's Head, his Countenance changed pale; then I aſked him, why he carried his Gun in that Manner? He made no Anſwer, but immediately turned ſhort, and ſhot my Lord.

Mr. Serj. *Cheſhyre*. In what Place was it? What is the Name of the Place?

Mr. *Flutter*. I don't know the Name of the Lane; it is near *Katharine-Hill*.

Mr. Serj. *Cheſhyre*. In what Pariſh is it?

Mr. *Flutter*. St. *Nicholas*'s Pariſh.

Mr. Serj. *Cheſhyre*. What was the Effect of his ſhooting?

Mr. *Flutter*. My Lord *Onſlow* fell off his Horſe on his Face; my Horſe ſtartled at the Gun going off; but as ſoon as I could turn him, and come up, I ſaw the Blood come; and I ſaid, My Lord, I will go to *Guildford*, and get ſome Surgeons; and accordingly I went.

Mr. *Marſh*. What became of the Priſoner?

Mr. *Flutter*. He walked up the ſandy Way; but I can't tell what became of him, becauſe I was gone for the Surgeon.

Mr. Ser. *Cheſhyre*. *Arnold*, would you aſk this Witneſs any Queſtions?

Mr. Juſtice *Tracy*. Put it to me; tell me what Queſtion you would have aſked, I will aſk it.

Priſoner. I don't know. Aſk him yourſelf, if you have a Mind to it. I don't know. I uſed to go that Way every Day. I am ſorry for what is done; and I can't think how I came to take that Way.

Mr. Serj. *Cheſhyre*. The Devil worked with him, ſtood at his right Hand, and directed him.

Mr. Parſons *ſworn*.

Mr. Serj. *Whitaker*. Mr. *Parſons*, pray give an Account of what happened on this 28th of *Auguſt*, as you was returning from Hunting with my Lord *Onſlow*.

Mr. *Parſons*. We met the Priſoner at the Bar, *Edward Arnold*.

Mr. Serj. *Whitaker*. Was you near my Lord?

Mr. Serj. *Cheſhyre*. How did you ride?

Mr. *Parſons*. I was behind Mr. *Flutter*.

Mr. Serj. *Cheſhyre*. You were pretty near together?

Mr. *Parſons*. Yes, very near.

Mr. Serj. *Cheſhyre*. What did you obſerve?

Mr. *Parſons*. We met this Man coming up the Lane. I ſaw him preſent his Piece; he took Aim, and ſhot my Lord. My Lord fell off from his Horſe.

Mr. Serj. *Cheſhyre*. What did you do?

Mr. *Parſons*. I went to ſee whether my Lord was dead: I ſaw he was not dead; and the Priſoner made off.

Mr. Serj. *Cheſhyre*. In what Manner did the Priſoner make off? Did he walk or run?

Mr. *Parſons*. He did not run. I rid after him, and rode him againſt the Bank: You Villain, ſaid I, you have killed my Lord: you will be hanged for it. You won't hang me to day, will you? ſays he. No, not to day; but you will be hanged.

Mr. Serj. *Cheſhyre*. How was his Countenance?

Mr. *Parſons*. Very pale and confuſed.

Mr. Serj. *Cheſhyre*. Did he ſurrender himſelf to you, or make any Reſiſtance?

Mr. *Parſons*. He told me, he would charge again: No, ſays I, you ſhan't: Then I called out to another Man to take him, one *Green:* When he came, I ſaid, This Villain hath ſhot my Lord *Onſlow*.

Mr. Juſtice *Tracy*. Did the Priſoner *Arnold* ſay he would charge again?

Mr. *Parſons*. He ſaid he would charge again; but he could not, for he had no Time.

Mr. Serj. *Cheſhyre*. How far was the Priſoner got from the Place where he ſhot my Lord?

Mr. *Parſons*. About thirty Yards.

Mr. Serj. *Cheſhyre*. What did you do?

Mr. *Parſons*. I brought him back to my Lord.

Mr. Serj. *Cheſhyre*. What happened then when you brought him to my Lord?

Mr. *Parſons*. When I brought him in Sight of my Lord, ſays my Lord, You Villain, you have killed me.

Mr. Serj. *Cheſhyre*. What did he ſay?---Mr. *Parſons*. He ſaid nothing.

Mr. Serj. *Cheſhyre*. Did he ſeem to ſtruggle?

Mr. *Parſons*. He did ſeem to ſtruggle, to ſtrive to come at my Lord, as I thought.

Mr. Juſtice *Tracy*. What did you think?

Mr. *Parſons*. When he was brought by my Lord, he ſtruggled, and ſeemed to ſtrive to come at him. Says I, Mr. *Green*, take him away, for he is coming at my Lord again: I thought ſo.

Mr. Juſtice *Tracy*. Had he his Gun?

Mr. *Parſons*. His Gun was taken away from him.

Mr. *Marſh*. You ſay you rid behind Mr. *Flutter* and my Lord; what Diſtance was there between you and them?

Mr. *Parſons*. My Lord and Mr. *Flutter* rode a-breaſt; I was behind, I believe, about two or three Yards.

Mr. *Marſh*. If I underſtand you right, you ſay you ſaw the Priſoner aim at my Lord; did you ſee him aim at my Lord *Onſlow?*

Mr. *Parſons*. I ſee him aim at my Lord *Onſlow*.

Mr. Serj. *Comyns*. In what Manner did he ſeem to level? Towards his Head, or how?---Mr. *Parſons*. I thought it was towards his Head.

Mr. Serj. *Comyns*. Where did he ſhoot him?

Mr. *Parſons*. In the left Shoulder.

Mr. Serj. *Cheſhyre*. Priſoner, will you aſk this Witneſs any Queſtion?

Priſoner. I don't know what to ſay to him.

Mr. John Fawks *ſworn*.

Mr. Serj. *Cheſhyre*. Sir, will you tell my Lord and the Jury, while you was in Company, and attending my Lord *Onſlow* from Hunting, what happened when this tragical Fact was committed.

Mr.

Mr. *Fawks*. My Lord, returning from Hunting with my Lord *Onſlow*, coming down this Lane where this Accident happened, I eſpied Mr. *Arnold* at ſome Diſtance before any of the reſt did: I ſaid to Mr. *Parſons*, Here is Mr. *Arnold* coming up the Lane; I will be hanged if he hath not a mind to ſhoot me. Mr. *Arnold* paſſed by my Lord with a ſtern Look upon him; I was in the Road; this Mr. *Flutter* was on the right Side of my Lord, and I was in the ſame road with my Lord, behind him about four or five Yards. He paſſed my Lord *Onſlow*, and comes up almoſt over-gainſt me, rather beyond me; I ſee him look ſternly on my Lord *Onſlow* and on me; he had his Piece ſo as they commonly carry them when they ſhoot flying: He comes up with his Piece and ſhoots my Lord *Onſlow* in his Shoulder: My Lord dropped by Degrees upon the Ground. I got off my Horſe, and turn'd my Lord's Face from the Ground, for fear it ſhould be ſcratched with the Duſt, which was like Pounce or fine Sand: So I turned him as ſoon as I could, and drew him to the Bank: I laid down, and my Lord laid down upon me upon my Soulder. I ſaid, Take care of the Villain, ſeize the Villain; he hath killed my Lord: I cried out to ſeize him, as well to ſecure him, as for fear the Villain ſhould turn and ſhoot again.

Mr. Juſtice *Tracy*. You ſay you ſaw him coming down the Lane?

Mr. *Fawks*. Yes, my Lord.

Mr. Juſt. *Tracy*. You ſay you followed my Lord *Onſlow* in the ſame Track?

Mr. *Fawks*. Yes, my Lord, I did.

Mr. Juſt. *Tracy*. How far was you from my Lord?

Mr. *Fawks*. I believe I might be in the ſame Track, about four or five Yards from him.

Mr. Juſtice *Tracy*. Then you was after my Lord?---Mr. *Fawkes*. Yes.

Mr. Juſtice *Tracy*. My Lord muſt be between you and the Priſoner; how came you to take Notice of him?

Mr. *Fawks*. My Lord, this Priſoner rid away with my Horſe a Week or a Fortnight before. I called at my Taylor's, and put my Horſe at the Door; in the mean Time I went in; and when I came to take my Horſe again, my Horſe was gone: So I run out in a Surprize, and ſeeing Nobody, a Man that was by told me, *Ned Arnold* hath rid away with your Horſe. I coming out into the Street, could ſee into the Middle of the Town; where I ſaw my Horſe three or four Stones Throw off, and he walking him up the Town; I made haſte——

Mr. Juſt. *Tracy*. I aſk you, you ſay you ſaw him at a Diſtance, and you was behind my Lord?

Mr. *Fawks*. Yes, I was ſo.

Mr. Juſtice *Tracy*. Then conſequently my Lord was between you and the Priſoner.

Mr. *Fawks*. Yes, the Way we came.

Mr. Juſtice *Tracy*. You ſay my Lord was between you and the Priſoner; how could you diſtinguiſh the Priſoner from my Lord?

Mr. *Fawks*. Becauſe he was in the Foot-way, and we were in the Horſe-way.

Mr. Juſtice *Tracy*. He was in a dfferent Track?

Mr. *Fawks*. Yes, my Lord; he comes up the Foot-way and the Way we were in was the Horſe-way.

Mr. Serj. *Cheſhyre*. As you was riding, could you perfectly diſtinguiſh the Man?---Mr. *Fawks*. Yes, I could.

Mr. Serj. *Comyns*. Pray, one Word. Thus you ſay, when he had paſſed by Lord *Onſlow* he turned back; what did he do at that Time?

Mr. *Fawks*. He gives a Look upon my Lord; ſtill kept on, and gave a Look, and went a little farther; then immediately turns round, and mounts his Gun; he had his Piece as uſually Men have when they ſhoot flying; and before I could ſpeak my Lord *Onſlow* dropped.

Mr. Serj. *Comyns*. When he mounted his Gun, did he take Aim or Level?

Mr. *Fawks*. Yes, he made a Level as if he would ſhoot at his Head.

Mr. Serj. *Comyns*. Which was neareſt, you or my Lord?

Mr. *Fawks*. I, rather; I was nigher my Lord than he was.

Mr. Serj. *Cheſhyre*. Priſoner, will you aſk this Witneſs any Queſtion?

Mr. Serj. *Comyns*. I deſire to aſk this Witneſs one other Queſtion. Had you any Diſcourſe with the Priſoner afterwards?

Mr. *Fawks*. Afterwards, Sir, when?

Mr. Serj. *Comyns*. After, when he was in Cuſtody for this Fact.

Mr. *Fawks*. Yes; when I went to him in the *Marſhalſea*, I did aſk him, why he ſhot my Lord *Onſlow*, and not me; becauſe when he had rid away with my Horſe, when I met him afterwards, Says I, Mr. *Arnold*, why did you do ſuch a Thing as to take my Horſe away? You don't know the Conſequence of it; you are guilty of Felony. He ſaid, I was a good Man; my Lord *Onſlow* was not.

Mr. *Marſh*. I deſire to aſk one Queſtion. You ſay you was behind my Lord riding in the ſame Track, the ſame Way as my Lord was in; was that when the Priſoner paſſed by?

Mr. *Fawks*. He was in the Foot-path, and turned back.

Mr. *Marſh*. Did you then ſee him aim his Gun?

Mr. *Fawks*. I did. I can't ſay I ſaw him till he was paſſed; but he had his Gun as they commonly carry them when they ſhoot flying; and he preſently mounted his Gun and fired.

Sol. for the Priſoner. We beg Leave to know from the Witneſſes for the King, whether this Priſoner was in Diſguiſe?

Witneſſes. No.

Soll. I beg Leave to aſk them one other Queſtion; Whether theſe Gentlemen that give Evidence for the King, whether they don't believe the Priſoner to be a Lunatick?

Mr. Juſtice *Tracy*. Will you aſk this Man any Queſtion?

Priſoner. I have nothing to ſay any more; I don't know what more Queſtions to aſk.

Mr. Juſtice *Tracy*. Mr. *Fawks*, Whether did you take this Man to be a Lunatick?

Mr. *Fawks* Moſt People that lived at *Guildford* have known him, that he was always a ſurly, moroſe-temper'd Man: As to his being lunatick, I know nothing of that; I am not a Judge of that.

Mr. Parſons *and Mr.* Flutter *call'd again.*

Mr. Serj. *Cheſhyre*. How long have you known the Man?

Mr. *Parſons*. Twenty Years.

Mr. Serj. *Cheſhyre*. Do you take him to be a Madman, or no?

Mr. *Parſons*. No; I took him for a moroſe, ill-natured Man.

Mr. Serj. *Cheſhyre*. What is his Behaviour?

Mr. *Parſons*. He is a ſullen ſort of a Man, a dogged Fellow.

Mr. Serj. *Whitaker*. How did he uſe to live?

Mr. *Parſons*. I don't know; he had a Houſe.

Mr. Serj. *Whitaker*. How did he live?

Mr. *Parſons*. He uſed to go a-fiſhing and a-ſhooting.

Mr. Serj *Whitaker*. Did ever any Body reſtrain him from the Uſe of a Gun, as being a Madman?

Mr. *Parſons*. I never heard they did.

Priſoner. I have had my Gun go off ſeveral Times in my Hand; but never, 'till now, had this Accident.

Mr. Serj. *Cheſhyre*. He never before ſhot a Lord in the Shoulder. He can aſk better Queſtions when he holds up his Head; but if his Guilt makes him hold it down, I can't help it.

Mr. Serj. *Whitaker*. Mr. *Fawks*, ſince they have aſked about his Sanity, we will aſk one Queſtion about what he ſaid when he was in the *Marſhalſea*, relating to this Fact. Had you any Diſourſe with him then?

Mr. *Fawks*. I told you when I ſpoke to him of the Fact in the *Marſhalſea*, I aſk'd him, Why he ſhot my Lord *Onſlow*, and not me, when I had told him of running away with my Horſe? He ſaid, that I was a good Man, and my Lord *Onſlow* was not.

Mary Smith *ſworn*.

Mr. Serj. *Comyns*. Will you go on, and ſhew the Preparation that was made for this Fact?

Mr. Serj. *Whitaker*. *Smith*, Do you know the Priſoner at the Bar?

Mrs. *Smith*. Yes, I do know him.

Mr. Serj. *Whitaker*. How long have you known him?

Mrs. *Smith*. I have known him ſeveral Years.

Mr. Serj. *Cheſhyre*. Do you remember, that in *Auguſt* laſt—and tell us when he came to your Shop? And for what Purpoſe?

Mrs. *Smith*. I was ironing; my Daughter was at one End of the Table, my Face was next the Door, my Door ſtood open: and Mr. *Arnold* comes in, and ſaid, Mrs. *Smith*, I want a quarter of a Pound of Powder, and a Pound of Shot; I told my Daughter to ſerve him; my Daughter ſerv'd him; and as it is uſual to aſk what Size, my Daughter aſked him, What Size? Mr. *Arnold* aſk'd, For the biggeſt you have; and ſo my Daughter took the Key, and went to the Drawer where the Shot was: Mother, ſays ſhe, there is none of the biggeſt Shot in the Drawer; ſays I, Serve ſuch Sort as there is; and my Daughter ſerved the ſecond Size; and when ſhe had ſerved him, he took up the Quarter of a Pound of Powder, and the Shot, and laid down Five-pence, and ſaid, There is your Money.

Mr. Serj. *Cheſhyre*. When was this?

Mrs. *Smith*. The Day that my Lord *Onſlow* was ſhot. I believe it was about an Hour after that, People came running up by my Door: I aſk'd my Daughter the Meaning of that Noiſe? My Daughter ſaid, My Lord *Onſlow* is ſhot.

Mr. Serj. *Cheſhyre*. Had you ſold him Shot before?

Mrs. *Smith*. Yes; he was a pretty good Cuſtomer.

Mr. Serj. *Cheſhyre*. For how long?

Mrs. *Smith*. I can't tell how many Winters; I believe, two or three Years.

Mr. Serj. *Cheſhyre*. Did you look upon him to be a Madman, and furniſh him with Powder and Shot?

Mrs. *Smith*. He uſed to aſk for Half a Pound of Powder, and three Pound of Shot, and laid down a Shilling for it; which was the Price I ſold it for.

Mr. Serj. *Cheſhyre*. Did you at any of theſe Times, for the Space of three Years you have furniſh'd him, take him to be a Madman?

Mrs. *Smith*. No.

Mr. Serj. *Cheſhyre*. Would you have done this if you had look'd upon him to be mad?

Mrs. *Smith*. No; I look'd upon him as ſenſible as any Cuſtomer I ad.

Mr. Serj. *Cheſhyre*. All that Time?---Mrs. *Smith*. Yes; all that Time.

Mr. Serj. *Cheſhyre*. And the laſt Time?

Mrs. *Smith*. Yes, the laſt Time.

Mr. Serj. *Comyns*. At the Time when he came laſt, in what manner did he deſcribe the Shot?

Mrs. *Smyth*. When he came to the Door, at firſt he aſk'd for a Quarter of a Pound of Powder, and a Pound of Shot: And, as is uſual, I aſk'd him, What Size? And he ſaid, The biggeſt Size.

Mr. Serj. *Comyns*. Doth he uſe to buy the biggeſt Size?

Mrs. *Smith*. He never had any of the biggeſt Size before.

Mr. Serj. *Comyns*. He never had any of that big Sort before; Did he ever uſe to come for a Pound of Shot? You ſay, He uſually came for three Pounds.

Mrs. *Smith*. He uſually came for three Pounds.

Mr. Serj. *Comyns*. When he paid for it, how did he pay for it?

Mrs. *Smith*. He paid Five-pence in Half-pence.

Mr. Serj. *Comyns*. Had he the Change ready?

Mrs. *Smith*. It was ready changed.

Mr. Serj. *Comyns*. Five-pence changed; Is that the common Price?

Mrs. *Smith*. Yes; Three-pence the Powder, and Two-pence the Shot.

Mr. Serj. *Comyns*. Is that the Price of the biggeſt Sort?

Mrs. *Smith*. Yes.

Mr. Serj. *Comyns*. But he never had any of the biggeſt before?

Mrs. *Smith*. No.

Mr. Serj. *Comyns*. He ſays it was Rabbit Shot.

Mr. Serj. *Cheſhyre*. I believe it was, becauſe he could get no bigger.

Mr. Juſtice *Tracy*. *(To the Priſoner.)* Will you aſk that Witneſs any Queſtion? *(The Priſoner made no Anſwer.)*

Mr. Flutter *call'd again.*

Mr. Serj. *Cheſhyre*. Sir, ſince you have been here, it hath been deſired you might be aſk'd, Whether the Priſoner is a Madman? You have known him ſome Time before this.

Mr. *Flutter*. I never was in his Company.

Mr. Serj. *Cheſhyre*. But you have known him; You have known there was ſuch a Perſon.----Mr. *Flutter*. Yes.

Mr. Serj. *Cheſhyre*. Did you ever ſee, or hear that he was reputed a Madman?

Mr. *Flutter*. I never had any Converſation with him, but as other Peo-ple have ſaid.

Mr. Serj. *Cheſhyre*. Since this Accident?

Mr. *Flutter*. Ay, ſince this Accident.

Mr. Juſtice *Tracy*. Do you live near him?

Mr. *Flutter*. I live at *Guildford*, within a quarter of a Mile of him.

Mr. Serj. *Cheſhyre*. Did you hear, before this Time, that he was re-puted a Madman?

Mr. *Flutter*. I have heard he would do odd Things, but I never heard that he was a Madman. I know nothing of that; I never heard it.

William Smith *ſworn*.

Mr. Serj. *Whitaker*. Pray, give an Account, Whether you ſee the Pri-ſoner at the Bar the Day this Accident happen'd?

W. Smith. And pleaſe you, my Lord.

Mr. Serj. *Cheſhyre*. This is the Son of the Witneſs, Mrs. *Smith*.

Smith. And pleaſe you, my Lord, I was waiting for my Lord *Onſlow*'s coming, to go a Fox-hunting; it was between Five and Six in the Morn-ing: Accordingly, I ſtaid till paſt Six; the Hounds came, and my Lord did not come: I was going up to *Katharine-Hill*.

Mr. Serj. *Cheſhyre*. The Place where this was done?

Smith. Yes. I was to go there to meet my Father. Going along the upper *Baron-Field*, I met Mr. *Arnold*; ſays I, Good Morrow; and ſays he, Good Morrow; this was in the Morning about Seven o'Clock.

Mr. Serj. *Cheſhyre*. Had you any Converſation with him?

Smith. And pleaſe you, my Lord, I will tell you. I met the Priſoner, and I ſays to him, Good Morrow; Good Morrow, ſays he; ſays he, Is my Lord *Onſlow* gone a Fox-hunting? Yes, ſays I, the Hounds are come, but my Lord is not come. He aſk'd me, Whether my Lord was come? I ſaid, He was not, but the Hounds were, and they were to ſtay at Mr. *Searle*'s till my Lord came. Says he, What, don't you go a Fox-hunt-ing? No, I ſaid, I muſt go to Farmer *Dent*'s; I muſt go there to help to unload Coal upon the Hill: I went up the Hill.

Mr. Serj. *Cheſhyre*. Had you any further Diſcourſe with him?

Smith. Only theſe three or four Words.

Mr. Serj. *Cheſhyre*. You bid him the Time of the Day, and he aſk'd for my Lord *Onſlow*?---*Smith*. Yes.

Mr. Serj. *Cheſhyre*. Had he his Gun?

Smith. No, he had no Gun; he had only his Hand-Baſket upon his Arm, coming to *Guildford*.

Mr. Serj. *Cheſhyre*. At that Time; you have known him ſome Time?

Smith. Yes; theſe ten Years.

Mr. Serj. *Cheſhyre*. By his Behaviour that Morning, or at any other Time, did you look on him to be diſtracted?

Smith. No; I never did. I have been out a Fiſhing with him; and ſometimes he would talk very well, and ſometimes he would not give me a Word.

Mr. Serj. *Cheſhyre*. Did he behave himſelf a Fiſhing as other People do, that underſtood the Art?

Smith. He was more clumſy at it, and would have ſtrong Tackle.

Mr. Serj. *Cheſhyre*. Some are more Artiſts than others.

Mr. Serj. *Whitaker*. How was he for Fowling?

Smith. For Fowling, I can't ſay as to that.

Mr. Serj. *Whitaker*. You have known him carry his Gun?

Smith. Yes, frequently: I have been out, and met him with his Gun frequently, in the Summer Time when the Rabbits were out.

Mr. Serj. *Cheſhyre*. What, he is a notable Markſman at the Head of a Rabbit?---*Smith*. I can't ſay nothing to that.

Mr. Serj. *Cheſhyre*. *(To the Priſoner.)* Will you aſk him any Queſtion?

Priſoner. I do not know what to ſay to it.

Mr. Serj. *Cheſhyre*. If you will tell me any Queſtion, I will aſk him for you.

Priſoner. If you pleaſe, I don't know what to aſk him.

John Sturt *ſworn*.

Mr. Serj. *Cheſhyre*. Pray, will you tell my Lord and the Jury, whether you ſaw the Priſoner at the Bar that Day my Lord *Onſlow* was ſhot?

Sturt. Before he ſhot my Lord *Onſlow*, he call'd at my Houſe, and aſk'd, if my Lord's Hounds were out a Hunting? I told him, I did not know; with that he ſtood humming and talking to himſelf, ſwearing and curſing, and damn'd my Lord *Onſlow* ſeveral Times; and ſtood ſo for near a Quarter of an Hour.

Mr. *Marſh*. Did you aſk him any Reaſon, why he did ſo?

Sturt. Yes, I did, but he would give me no Anſwer, not a Word.

Mr. Serj *Cheſhyre*. Do you remember you heard a Gun go off?

Sturt. Not till he ſhot my Lord *Onſlow*; not before.

Mr. *Marſh*. Did you ever hear him ſay any thing, by way of threatning?

Sturt. He ſwore and curs'd: Says he, God damn him, if I ſee him, I will ſhoot my Lord *Onſlow*.

Mr. *Marſh*. How long was this before?

Sturt. About a Quarter of an Hour.

Mr. *Marſh*. How far was your Houſe off where my Lord was ſhot?

Sturt. Not above two Stones Throw.

Mr. *Marſh*. How long have you known this Man?

Sturt. From a Child.

Mr. *Marſh*. Have you known him carry a Gun?

Sturt. Yes, ſeveral Times.

Mr. *Marſh*. At this Time, or any Time before, did you take him for a Madman?

Sturt. He never talk'd much Senſe; he talk'd to himſelf: He would ſit and rave to himſelf.

Priſoner. I never was guilty of Swearing.

Sturt. He aſk'd me for a Mug of Beer: No, ſays I, you have had too much already.

Mr. Serj. *Cheſhyre*. Did you take him to be in Drink?

Sturt. Yes, I did.

Sollicitor for the Priſoner. We deſire that this Perſon may be aſk'd, whe-ther he did not believe the Priſoner to be a Madman, and void of Reaſon?

Mr. Juſtice *Tracy*. What do you ſay to that Queſtion? Did you not take him to be a diſtracted Man, a Madman?

Sturt. I did not take him for a ſober Man; I thought he was not right in his Senſes, he took to Swearing ſo much.

Mr. Serj. *Cheſhyre*. Did you take that to proceed from Drunkenneſs, or from Lunacy?

Sturt. I don't know; he hath ſat and ſwore to himſelf ſeveral Times: He would talk ſtrange Things.

Sollicitor. We deſire to know what thoſe ſtrange Things were?

Mr. Juſtice *Tracy*. Do you know what thoſe ſtrange Things were?

Sturt. I have heard him ſwear; he would talk inwardly to himſelf, that I could not diſtinguiſh.

Mr. Juſtice *Tracy*. Did you ever know him to do any Hurt?---*Sturt*. No.

Sol We deſire to know whether this Man hath not often declared, he thought him to be a Madman?

Sturt. We did not take him to be in his right Senſes: He was very often ſo, a great many of the Neighbours know it.

Mr. Juſtice *Tracy*. *(To the Priſoner.)* Would you aſk him any Queſtion?

John White *ſworn*.

Mr. Serj. *Whitaker*. Sir, look upon the Priſoner, and tell us, Whether you ſee him that Morning my Lord *Onſlow* was ſhot?

White. Yes, I did.

Mr. Serj. *Whitaker*. Whether you ſee him with a Gun, and what he ſaid?

White. I was at a Houſe, which is call'd ——— at the *Hope and Anchor*, at *Katharine-Hill*, and while I was drinking a Pint of Beer, I heard a Gun go off; ſome Time afterwards, this *Edward Arnold* comes in, with his Gun in his Hand: Being acquainted with him, I took hold of him by the Coat, to look under it, and aſk'd him, If he had ſhot a Rab-bit? He ſaid, No: Nor a Bird? No: What, did you ſhoot nothing? No, it was only to diſcharge my Gun.

Mr. Serj. *Whitaker*. What Time was this?

White. Upwards of Nine o'Clock; near half an Hour, as nigh as I can gueſs, before my Lord *Onſlow* was ſhot.

Mr. Serj. *Whitaker*. The Reaſon he gave was, it was to diſcharge his Gun?---*White*. Yes.

Mr. Serj. *Whitaker*. Do you know any thing further, as to a new Charge?

White. No; he went out at one Door, and I at another.

Mr. Serj. *Cheſhyre*. Did he uſe to carry Rabbits under his Coat, con-ceal'd? Becauſe you look'd there?

White. I had a Mind to know if he had ſhot a Rabbit.

Mr. Serj. *Cheſhyre*. Did he carry a Gun formerly?

White. Yes, in his youthful Days, when his Father was living.

Mr. Serj. *Cheſhyre*. Did he not uſe frequently to carry a Gun?

White. No, not frequently.

Mr. Serj. *Cheſhyre*. When did you ſee him before with a Gun? Have you ſeen him within a Year?

White. I can't poſitively anſwer, whether I have, or no; I believe I have.

Mr. Serj. *Cheſhyre*. Did you ever take him for a Madman?

White. No; I did not take him for a Madman, or a wiſe Man, nor a Fool; he was cunning enough in his Dealings.

Mr. Serj. *Cheſhyre*. What Obſervations have you made as to that?

White. When I did any Work for him, I was as much troubled to get my Money, he was ſo near.

Mr. Serj. *Whitaker*. Near? What do you mean?

White. Without you made a Bargain with him, he was a hard Man to deal with; but he would pay honeſtly, and juſtly.

Mr. Serj. *Cheſhyre*. When you ſaid a hard Bargain, I ſuppoſe, by that you mean, he would pay as little as he could, and have as much as he could for his Money?---*White*. Yes.

Mr. Juſtice *Tracy*. You talk of him as a Man that had Dealings, What Buſineſs did he follow?

White. No, my Lord, it was only for his Apparel.

Mr. Juſtice *Tracy*. You are his Taylor?---*White*. Yes, my Lord.

Mr. Serj. *Cheſhyre*. Have you heard him ſay any thing of my Lord *Onſlow*?---*White*. No, not lately.

Mr. Serj. *Cheſhyre*. When did you? You are upon your Oath, there-fore pray recollect yourſelf.

Mr. Serj. *Whitaker*. How long before this ſhooting at my Lord *Onſlow* was it, that you had any Diſcourſe with him about my Lord *Onſlow*?

White. It was ſome Time before; but to ſay juſtly how long, I can't: I happen'd to be in his Company: I took him to be amiſs; whether he was in Drink, or no, I can't tell. He aſk'd me, If I knew my Lord *On-ſlow*? I told him, Yes. He aſk'd me, What Sort of a Man he was? I ſaid, Doubtleſs, a very good Man. He aſk'd me, if my Lady was a good Wo-man? Yes, certainly, a very good Woman, I never heard the contrary. Whether he was in Liquor or no, I can't ſay: Says he, turning himſelf about, Why doth ſhe not cut his Throat?

Mr. Serj. *Whitaker*. Repeat the Words in the Manner he ſaid.

White. He ſpoke, as his Speech is low, and the like; after that he had aſk'd me theſe Queſtions, he made a Hum, Why don't ſhe cut his Throat?

Mr. Serj. *Comyns*. Did he give any Reaſon why he ſaid ſo?

White. No, I left him; and I ſaid, God mend you. I went away, and left him.

Mr. Serj. *Whitaker*. The Morning you ſee him, what Temper was he in? How did he appear to be that Morning he ſhot my Lord *Onſlow*?

White. He ſeem'd to be in as ſedate a Temper as ever I ſaw him in my Life.

Mr. Serj. *Whitaker*. I deſire another Queſtion; Did you aſk the Reaſon of his diſcharging his Gun?

White. What, about charging again? Nothing further paſs'd: He drank his Beer, and went out at one Door, and I at another.

Mr. Serj. *Whitaker*. You had no Talk of a freſh Charge?

White. No, I don't remember we had any.

Mr. *Marſh.* You ſay you got hold of him, thinking he had ſhot a Rabbit, Whether you did not do that, becauſe he went after that Game?

White. His Father kept Grounds where were a great many Rabbits, and he uſed to uſe it then.

Mr. Serj. *Comyns.* Had you any Diſcourſe with him after his ſhooting my Lord *Onſlow?*

White. I did, in Good-will, call to ſee him in the *Marſhalſea.*

Mr. Serj. *Comyns.* What paſſed then?

White. I aſked him how he did, and he aſked me the ſame; and he aſked me what People ſaid? Says I, I am ſorry for it, but the Vogue of the People of our Town is, that you will be hanged, and your Friends are in great Grief for you; and if that be the Caſe, I adviſe you to get good Books, and repent; and he anſwered, He did not deſire that any body ſhould be concerned for him.

Mr. Serj. *Cheſhyre.* Did he talk rationally?

White. As at other Times: We drank a Mug of Ale together, and ſo we parted.

Mr. *Marſh.* Had you any Talk about my Lord *Onſlow* being dead?

Mr. Serj. *Cheſhyre.* At any other Time, whilſt he was in the Priſon at *Guildford,* in the Houſe of Correction?

White. I had like to have forgot; I did go to him one Time, when he was in the Houſe of Correction, and I told him, my Lord *Onſlow* was dead; and he ſaid if he was dead, he could not help it; and ſaid no more.

Mr. Allen *ſworn.*

Mr. Serj. *Cheſhyre.* I think, Sir, you have the Honour of acting in the Commiſſion of the Peace?

Mr. *Allen.* I have the Trouble of it, I don't think it any Honour.

Mr. Serj. *Cheſhyre.* Pray tell my Lord and the Jury, what you know of this Matter.

Mr. *Allen.* My Lord, I live at *Guildford,* and hearing of this ſad Accident, I went down to the Houſe of Correction, and examined him, and I found him in a very ſullen Mood, and I could get nothing out of him for a long Time, and he could not look me in the Face: With a great deal of Difficulty and Perſuaſion, at laſt he expreſſed himſelf thus: I don't trouble my Lord *Onſlow,* why do you trouble me? And he had been pretty much teized and baited by the People, exclaiming againſt him, and coming into the Priſon to ſee ſuch a Monſter. I thought the next Day, after he had ſlept upon it, he might be in better Temper, ſo I left him then, and went again the next Day, but I did not find him ſo; for he run on with abundance of Vehemence againſt my Lord *Onſlow,* and that he was the Author of all the Tumults, Diſturbances, and Confuſions, and wicked Devices, that had happened in the Country. I aſked him, What was the Reaſon of his Animoſity; and if any Perſon had given him any Occaſion to ſay ſo? He ſaid, No, but he was a very ill Man; and repeated the ſame, That he was the Author of all the Confuſions, Tumults, and Noiſe, and wicked Devices; that he had over a hundred Times, he was very fond of thoſe Words, *Wicked Devices.* In the Courſe of his Examination, I took a great deal of Pains ſeveral Times; I put the ſame Queſtion ſeveral ways, to ſee if he would be brought to anſwer, and he would be ſilent. What ſurprized me, he all of a ſuddden ſtarts up, and looks me in the Face, ſays he, Where is the King? The King, ſaid I! what have you to do with the King? Says he, The King is in Fault, as well as my Lord *Onſlow.* The King! what doth the Man mean? He anſwered me as regularly, and as faſt, as I put the Queſtion. Says he, He put my Lord *Onſlow* upon doing and making theſe Diſturbances in the Country, or he ſuffers him to do it. Says I, Have you ſeen the King? Yes, ſays he, I have ſeen him once. Somebody came in and ſaid, he had been at *London* to ſee the King: Says I, Did you go to *London* to ſpeak to the King? Yes, I did go to ſee if I could come at the King, to ſee if he could not mend the Matter; and ſeveral Times he ſtarted up, and ſaid, Where is the King? Is the King come home? And he ſaid, When he came to *London,* he was gone abroad; and ſo they told him he was ſtill abroad.

Sollicitor for the Priſoner. My Lord, we deſire to aſk this Gentleman this Queſtion; Whether after this Examination of him, which he took at the Houſe of Correction, he did not declare he believed him to be a Madman, and out of his Senſes?

Mr. *Allen.* Some Time after this, I met his Siſters, very worthy Gentlewomen.——

Mr. Serj. *Cheſhyre.* Whoſe Siſters?

Mr. *Allen.* The Siſters of the Priſoner, *Edward Arnold.* As to the Queſtion, Whether I have not ſeveral Times ſaid, I looked upon him to be a Madman?——

Sollicitor. Whether you did not declare, after you took his Examination, that you believed Mr. *Arnold* to be a Lunatick, or a Madman?

Mr. *Allen.* I remember, ſome Days after I had examined him, I met with two of his Siſters, Gentlewomen of very good Reputation. They knew me firſt, and told me who they were: I being ſhort-ſighted, could not ſo ſoon recollect them, and in the Night-time; and they repreſented to me, how miſerably affected they were with this ſad Accident; and I ſaid, To be ſure, it is very deplorable. They replied, To be ſure, my Brother is mad; without he had been mad, he would not have done ſo: Why, ſays I, that is the beſt Turn you can give to it. His Behaviour is very extravagant, that I did ſay; ſo it was, to be ſure: What could I have ſaid? Would you have had me told the Ladies what a Rogue they had for their Brother?

Mr. Serj. *Cheſhyre.* Did you know him before?

Mr. *Allen.* No, I did not.

Sollicitor. My Lord, he doth not anſwer the Queſtion; he doth not ſay, whether he did not declare, that he believed him to be a Madman.

Mr. *Allen.* I never did, as I remember. In my Opinion, he was very much out of the common Way of Men, in the whole Courſe of his Life, and his Proceeding, as far as I could gather from his own Behaviour, and the Courſe of his Examination: But that I ſaid he was a Madman, I can't remember.

Sol. If you pleaſe, Sir, one Word more: Whether the Priſoner, at the Time that he was in the Priſon, did not deſire Mr. *Allen* to ſhoot him thro' the Head? And whether Mr. *Allen* did not declare the ſame?

Mr. *Allen.* He ſaid he was willing to die, why would not my Lord *Onſlow* ſhoot him, or give him a Gun, and he would ſhoot himſelf? I am willing to die; for I am not willing to bring my Friend into Trouble.

Mr. Serj. *Cheſhyre.* Pray tell the Occaſion of his ſaying, he would not bring his Friend into Trouble.

Mr. *Allen.* The Occaſion that drew him into that, I had a Notion, that ſomebody muſt ſet him to work, the Act appeared ſo unprovoked, and premeditated. When I examined as to that Circumſtance, eſpecially when he ſaid, My Lord was the Author of thoſe Tumults and Diſturbances, I aſked him, What Diſturbances? He ſaid, At the laſt Election; and wherever he went, People ſtill damned and curſed my Lord *Onſlow.* Says I, Did you ever mention any thing of this Deſign? He told me, He had long and deliberately intended to murder my Lord *Onſlow.*

Mr. Ser. *Cheſhyre.* How long?

Mr. *Allen.* Ever ſince laſt Horſe-Race was Twelve-month; and he had communicated ſuch his Intention to his Friends, and they had encouraged him in it.

Mr. Serj. *Cheſhyre.* Did he name any body?

Mr. *Allen.* He did name two Perſons to me.

Mr. Serj. *Cheſhyre.* We deſire they may be named.

Mr. Juſtice *Tracy.* What Perſons did he name?

Mr. *Allen.* He named them as Perſons that he had communicated his Intention of murdering my Lord *Onſlow;* and they approved of it.

Sol. My Lord, if I am rightly inſtructed, theſe very Perſons he had named, they are Friends of my Lord *Onſlow.* Our Defence is Lunacy; and if he declared Perſons that are Friends of my Lord *Onſlow,* it is an Argument for us; and that is the only Reaſon why we deſire Mr. *Allen* to anſwer to your Queſtion.

Mr. *Allen.* As ſoon as ever he named the two Perſons, ſays I, There are ſeveral Perſons in the Town of the ſame Name; but who were his Adviſers?

Mr. Juſtice *Tracy.* You don't ſay that he ſaid they were his Adviſers?

Mr. *Allen.* No, not his Adviſers; they approved of it, and encouraged him in it; and when he found me ſolicitous to fix who thoſe Perſons were, as I thought it behoved me to be, he would have recalled his Words; ſays he, Do you think I will bring my Friends into Trouble? No; I am willing to die; why don't they kill me? Why don't my Lord *Onſlow* kill me? Why don't he let me have a Gun to kill myſelf by? Says he, I won't bring my Friends into Trouble.

Mr. Serj. *Cheſhyre.* After he had named the Perſons, and you purſued the Inquiry, then he drew in his Words?

Mr. *Allen.* Yes, after he had named them; but he would not bring his Friends into Trouble.

(After ſome Diſpute about naming or not naming)

Mr. Serj. *Cheſhyre.* Then I aſk you, and deſire you'll declare upon your Oath, Were thoſe Perſons that were ſo named by the Priſoner remarkable Friends, and in the Intereſt of my Lord *Onſlow,* or oppoſed him in his Intereſt?

Mr. *Allen.* They very remarkably oppoſed him, and were ever underſtood to be bitter Enemies to my Lord *Onſlow.*

Sol. for the Priſoner. My Lord, I deſire to know of this Gentleman, Whether Mr. *Arnold* did not deſire him to ſhoot him through the Brains, or Words to that Purpoſe?

Mr. *Allen.* No, my Lord; I don't remember thoſe Words: His Words I remember, for I reduced them into Writing. I would have taken it by way of Confeſſion; but he was ſo ſtubborn, that I ſuppoſe if I had offered to produce Pen, Ink, and Paper, and take the Words from his Mouth, he would not have ſaid one Word: But in a few Days I reduced them into Writing; and I do remember very well he ſaid he would ſhoot himſelf: Why don't my Lord *Onſlow* ſhoot me? Let me have a Gun, that I may ſhoot myſelf: But I don't remember Brains to be mentioned.

Sol. We deſire, my Lord, to know, whether all the Perſons named were Friends or Enemies to my Lord *Onſlow?*

Mr. *Allen.* He named but two to me.

Mr. Serj. *Cheſhyre.* My Lord, we have gone through the King's Evidence; and we reſerve what is our Duty to reply, if there be any Occaſion: At preſent we reſt it here.

Mr. Juſtice *Tracy.* Priſoner, you know what is doing; you are upon your Trial for your Life; the Counſel for the King have gone through their Evidence; have offered all that they think material againſt you; you have heard all that hath been offered againſt you: Now it comes to your turn to make your Defence; what ſay you for yourſelf?

Priſoner. With humble Submiſſion, I don't know what to ſay. May God forgive; if it is my Fault, I am ſorry for it. I don't know what to ſay more.

Mr. Juſtice *Tracy.* What have you ſaid? Repeat what you ſaid.

Priſoner. With all Submiſſion to your Lordſhip, I don't know what to ſay. I aſk Pardon for all my Offences and Faults.

Mr. Juſtice *Tracy.* How came you to attempt this?

Priſoner. I don't know how it happened.

Mr. Juſtice *Tracy.* And what was the Cauſe? It don't appear that this Noble Lord ever did you the leaſt Injury. Call your Witneſſes for the Priſoner.

Sol. for the Priſoner. Nathaniel Arnold.

Nathaniel Arnold *ſworn.*

Mr. Juſtice *Tracy.* Sir you are called here on the Behalf of the Priſoner; What can you ſay?

Mr. *Arnold.* My Lord, he is my Brother; I have known him a great many Years; I am ſorry I am come to ſpeak any thing on ſuch an Occaſion: I know him to be a Madman; therefore I hope I ſhall ſhew ſuch Things of him, that the Court will think him ſo.

I have declared to my Lord *Onſlow,* that I have no Intention to ſkreen him from Puniſhment; but to endeavour to ſave him from the Gallows. My Lord, when he was young, my Father hath tried to put him Apprentice to two or three ſeveral Places: It ſignified nothing; he came home again: Afterwards Mr. *Ford,* who is a Brewer at *Guildford,* perſuaded my Father to let him be with him: He took him, he uſed him like his Child, laid him with his Son; but he would not ſtay: He was at other Places. Some time afterward he had a mind to make me a Viſit at *London:* I knew what an ill-natured Fellow he was to my Father and Siſters: I would have perſuaded him to ſtay with me; that would not do. Afterwards I had a Commiſſion from my Father to allow him Fifteen Pounds a Year, and ſend him into *Yorkſhire.* I writ a Letter to an

Acquain-

Acquaintance there, and had a Place provided for him, equipped him with Cloaths, and ſent him down: He came back again. Nothing we could do would govern him, he ſeemed ſo like a Madman. When my Father died, he left him Five Pounds a Quarter. He would lay under Barns, Hay-Ricks: I have caught him under my own Hay-Rick in a Morning, when he might have lain in his own Bed. He had a Houſe in the Neighbourhood; but he had never a Stool, or a Pan, nor nothing at all in it. I don't know whether he had a Chair, but there was no Bed. We could not perſuade him off this: We would let him have Money.

Mr. Juſtice *Tracy*. He would live by himſelf.

Mr. *Arnold*. He lived by himſelf; and he hath known when Quarter-Day hath come, becauſe People have dunned him for Money; this *White* the Taylor, *Sturt* the Alehouſe-Keeper. And as ſoon as I came, and he had Notice, he would dart down the Hill to me, where I have been ſurprized by his Looks: Sometimes I gave him good Words, ſometimes bad; ſometimes I gave him a little Drink, ſometimes none, for fear: He appeared as much like a Madman as ever any body did.

Mr. Serj. *Cheſhyre*. You are his Brother, and you would ſave him from hanging; it is natural, and I don't diſcommend you. You are upon your Oath; and Juſtice muſt be done. Sir, let me aſk you, Whether you looked upon yourſelf to be a Madman in treating him in this Manner?

Mr. *Arnold* No.

Mr. Serj. *Cheſhyre*. You ſay this Man had his Memory return very quick every Quarter-Day; as ſoon as that came, he would come to you for his Money: Did you ever refuſe it him, becauſe he was mad, and not fit to be entruſted with it?

Mr. *Arnold*. No, I never did.

Mr. Serj. *Cheſhyre*. At the ſeveral times he was put Apprentice, like an untoward Boy, he would run away; did you look on that as a Sign of Madneſs? When he was put to a Brewer, did the Perſon you treated with, or you, look on him to be a Madman?

Mr. *Arnold*. I did underſtand that he thought him diſordered in his Brain.

Mr. Serj. *Cheſhyre*. As every untoward Boy is; when you ſent a Letter into *Yorkſhire* only, and no Perſon with him to take Care of him, would you, if you had thought him diſtracted, have ſent him alone to provide for himſelf?

Mr. *Arnold*. We did not ſend him alone, but we ſent him on Ship-board; I ſent down to a Perſon to take Care of him when he came there; I did not think him ſo much a Madman as to be chained.

Mr. Serj. *Cheſhyre*. Would you take it to be proper, you that are his Brother, to ſend him on Ship-board into a Country he had never been in before, only on a Recommendation of a Letter, if you had thought him ſo mad as not to be able to provide for, and govern himſelf?

Mr. *Arnold*. I ſent him to one that was my Cuſtomer.

Mr. Serj. *Cheſhyre*. Did you obſerve in thoſe Letters that he was mad?

Mr. *Arnold*. No, I did not.

Mr. Serj. *Cheſhyre*. Then in theſe ſeveral Paſſages that he was too ſharp for you, is that a Sign of a Madman? Are theſe your ſole Reaſons, becauſe he acted like a naughty Man, that he was a Madman?

Mr. Serj. *Whitaker*. If he was diſtempered, why did you not let him be confined?

Mr. *Arnold*. I did not think him ſo much a Madman as to confine him.

Mr. Serj. *Whitaker*. I would aſk you, on your own Knowledge, Can you give an Account of any thing that he hath done, but as a ſullen or cruel Man?

Mr. *Marſh*. You don't look upon him ſo mad as to be chained?

Mr. *Arnold*. No, I did not.

Mr. *Marſh*. Did you put him under the Care of any Perſon?

Mr. *Arnold*. No, I did not; he lived at large.

Mr. *Marſh*. Did he ever live with you?

Mr. *Arnold*. Yes, he did.

Mr. *Marſh*. How did he behave himſelf then?

Mr. *Arnold*. Very oddly.

Mr. *Marſh*. As how?

Mr. *Arnold*. As a Madman, I thought.

Mr. Serj. *Cheſhyre*. Whether or no did he uſe to carry a Gun?

Mr. *Arnold*. Yes, often in his Father's Time.

Mr. Serj. *Cheſhyre*. He uſed to uſe a Gun?

Mr. *Arnold*. He uſed a Gun in my Father's Time.

Mr. Juſtice *Tracy*. And hath he done ſo ſince?

Mr. *Arnold*. Yes, ſeveral Times; and I have ſeen him with one ſeveral Times ſince.

Mr. Serj. *Cheſhyre*. Why did not you take it from him, as he was a Madman?

Mr. *Arnold*. He was my Brother, and I did not care to oppreſs him.

Mr. Serj. *Cheſhyre*. Now you would have prevented him from doing this Miſchief, if you had done ſo. Did you ever farm any Land?

Mr. *Arnold*. I have.

Mr. Serj. *Cheſhyre*. Did you ever employ him?

Mr. *Arnold*. I have employed him in raking of Hay or Barley.

Mr. Serj. *Cheſhyre*. Did you find he brought it together, or ſcattered it about?

Mr. *Arnold*. He brought it together, but in ſuch a manner, not right as a Workman ought to do.

Mr. Serj. *Cheſhyre*. Ay, he was a naughty untoward Boy from his Youth.

William Arnold *ſworn*.

The Priſoner at the Bar is my Brother; I believe him to be a Madman.

Mr. Serj. *Cheſhyre*. Give your Reaſons.

Mr. Juſtice *Tracy*. What, is he a Lunatick?

Mr. *Arnold*. He is not perfect in his Senſes; he did not know what he did at ſome certain Times: I can't ſay he was always ſo.

Mr. Serj. *Cheſhyre*. Go on, and give your Reaſons.

Mr. *Arnold*. In my Father's Time I have heard him curſe him, and call him wicked and abominable Names, without any Provocation: I have heard him talk to himſelf, ſometimes catch at his Words, ſometimes break out into Paſſions of Curſing and Swearing, without any Provocation: After this I have obſerved him to burſt out into a fooliſh Laughter, and grin like any Madman: If you aſked him what he talked of, ſometimes he would give an Anſwer, ſometimes not. This I have obſerved ſeveral Times; as to the particular Times, I cannot ſet it forth; but this, as to the general, that I ſometimes have dreaded him. Sometimes he would be pretty rational, and act like other Men.

Mr. Serj. *Cheſhyre*. Do you take that for the Sign of a Madman, to do a very wicked Thing?

Mr. *Arnold*. Madmen do very wicked Things.

Mr. Serj. *Cheſhyre*. Do you take all to be Madmen that do wicked Things?

Mr. *Arnold*. Some do wicked Things for the Sake of Profit and Gain.

Mr. Serj. *Cheſhyre*. Was you one that paid him any Share of this Allowance?

Mr. *Arnold*. I am concerned: My Father left a ſmall Matter to my Brother and me, to pay him Five Pounds a Quarter; and my Brother commonly pays him: I have aſked him about it ſometimes; and he ſaid, the Priſoner would run in Score, and then Perſons would dunn him.

Mr. Serj. *Cheſhyre*. How do you know this?

Mr. *Arnold*. I have heard my Brother ſay this.

Mr. Serj. *Cheſhire*. Then you know nothing but what your Brother told you?

Mr. *Arnold*. I know my Brother owed Money.

Mr. Serj. *Cheſhyre*. The People uſed to truſt him.

Mr. Serj. *Cheſhyre*. Mr. *Nathaniel Arnold*, Sir, when you paid him his Quarterage, did he give you a Receipt?

Mr. *N. Arnold*. I always writ the Receipt, and he ſigned it.

Mr. Serj. *Cheſhyre*. Did you not read it over to him, or let him read it?

Mr. *N. Arnold*. Yes, Sir.

Mr. Serj. *Cheſhyre*. At Quarter-Day he would be pretty well in his Senſes?

Mr. *N. Arnold*. Becauſe he was dunned for Money.

Mr. Serj. *Cheſhyre*. Did not he and you uſe to write and conſer by Letters?

Mr. *N. Arnold*. Never in my Days, as I know of.

Mr. Juſtice *Tracy*. Can he write?—Mr. *N. Arnold*. Yes, he can write.

Mr. Juſtice *Tracy*. (*Aſks Mr.* William Arnold) Did you never write to him?

Mr. *W. Arnold*. I don't know; it is a great while ago if I did.

Mr. Serj. *Darnell*. As to what you were ſpeaking when he ran a Score, Did they uſe to put him in mind of his Quarterage?

Mr. *W. Arnold*. Thoſe Perſons he owed Money to would dunn him.

Mr. Serj. *Darnell*. And when they did dunn him, did you apprehend he knew what they meant by it?—Mr. *W. Arnold*. Yes, he might.

Mr. Serj. *Darnell*. When he was told Quarter-Day was at hand, what would he do?

Mr. *W. Arnold*. I can't ſay, but he hath dunned my Brother for Money.

Mr. Serj. *Darnell*. When?

Both. When he hath wanted, and had not Money in his Pockets.

Mr. Serj. *Darnell*. Did he never tell you that he had Debts to pay?

Mr. *N. Arnold*. Yes, he hath.

Mr. Serj. *Darnell*. What do you mean when you ſay, He was ſometimes in his Senſes, and ſometimes not; how often were thoſe Intervals?

Mr. *N. Arnold*. I can't ſay it.

Mr. Serj. *Darnell*. Did you never obſerve ſome Men of Diſcretion act indiſcretionally?

Mr. *N. Arnold*. Yes certainly, I may have done it myſelf.

Mr. William Arnold *proceeds*.

The tenth of *July* laſt he came to my Houſe in *Cannon-Street*; I finding of him there, I aſked him what brought him to Town? He ſaid, he could not tell. What Buſineſs have you in Town? It is not a proper Place for you; you have not much Money to ſpend: Beſides, you may fall into bad Company. Says he, I come to ſee you, I think; what elſe have I to do? Says he, I can't be eaſy; my Lord *Onſlow* hath bewitched me; he plagues me Day and Night; I can't eat or drink; if I eat any thing, it comes up: I am, ſays he, as if they pumped the Breath out of my Body.

Mr. Juſtice *Tracy*. How long ago is this?

Mr. *W. Arnold*. The Tenth of *July* laſt. I then aſked him, why he was ſo concerned about my Lord *Onſlow*; doth my Lord know you? Says he, I don't know that he doth: When did you ſee my Lord? Says he, I don't know; not this great while: Why are you ſo diſturbed, then, about my Lord? Have you been ſhooting in my Lord's Manor? No. Says I, Pray be eaſy; don't diſturb yourſelf with theſe wild Notions; pray be eaſy. I then gave him ſome good Words, and I gave him ſomething to eat, and made him promiſe to return home, and be eaſy; which if I would give him Money to return home, he would do, as he did promiſe me he would: And that was the laſt Time I ſaw him before this unhappy Accident of my Lord *Onſlow*'s.

Mr. Serj. *Darnell*. Did he give you any other Reaſon of his coming to Town?

Mr. *W. Arnold*. I don't remember he did: After ſome Heſitation, and a very wild Look, he ſaid, I am come to ſee you, I think.

Mr. Serj. *Cheſhyre*. Give my Lord an Account, whether or no, when he was talking wildly againſt my Lord *Onſlow*, did he tell you who put him upon that?

Mr. *W. Arnold*. If you pleaſe, I have aſked him theſe Queſtions: How come you to do this wicked Act? Did any body put you upon it? No, ſays he. I am ſorry you have done this vile Action. Did my Lord *Onſlow* give you any Provocation? Or any body ſet upon you to do it? Says he, My Lord *Onſlow* hath bewitched me, was always a Plague to me, and was the Plague of the whole Country; and ſeveral Things to the ſame Purpoſe.

Mr. Serj. *Cheſhyre*. You talk you gave him Money and Drink, I ſuppoſe you gave him both.

Mr. *W. Arnold*. I gave him Victuals and Drink, and Money in his Pocket, provided he returned home, which he promiſed me he would do.

Mr. Serj. *Cheſhyre*. If you looked upon him as a Madman, why would you give him Money, and be ſatisfied with his Promiſe that he would return home?

Mr. *W. Arnold*. I never knew that he attempted to do any body Miſchief.

Mr. Serj. *Cheſhyre*. How did you know but he might do you or himſelf a Miſchief? Pray anſwer the Queſtion, and be conſiſtent; you have ſaid, you looked upon him as a Madman, and that he could not give

any

any good Reaſon why he was come to *London*, but ſaid, he is come to ſee you, he thinks; and you gave him Money, and Victuals, and Drink, on his promiſing you to return home again; Did he return home?

Mr. *W. Arnold.* I thought he did.

Mr. Serj. *Cheſhyre.* Now the great Queſtion is, Whether he or you are the Madman?

Mr. *W. Arnold.* I ſubmit that to you. I did aſk him where he lodged: but I could not get it out of him.

Mr. Serj. *Whitaker.* Did you rely upon his Promiſe that he would go home?---Mr. *W. Arnold.* I can't ſay I did entirely depend upon it.

Mr. *Marſh.* You ſay, the tenth of *July* your Brother came to ſee you in *London*, and expreſſed Uneaſineſs in being plagued by my Lord *Onſlow*; Did he ſay he would do any thing by way of plaguing my Lord *Onſlow?*

Mr. *W. Arnold.* No, he did not.

Mr. *Marſh.* Mr. *Nathaniel Arnold*, did you ſee him then?

Mr. *N. Arnold.* No, I was not there.

Mr. *Marſh.* Did you hear him at any other time ſay any thing of my Lord *Onſlow?*

Mr. *N. Arnold.* I have heard him ſay my Lord *Onſlow* had bewitched him.

Mr. *Marſh.* Did you hear him expreſs any Reſentment, or that he would make any Retaliation?

Mr. *N. Arnold.* No, nothing at all of that.

Mr. *W. Arnold.* I did wait on my Lord *Onſlow* when he uſed to *lay to* Sir *More Molyneux*'s Lodge.

Mr. Serj. *Cheſhyre.* He uſed to be there to deſtroy his Game.

Mr. *W. Arnold.* I don't know; I never ſee him there. I did wait on my Lord *Onſlow*; I humbly begged his Lordſhip's Pardon; but I did really believe him to be a Lunatick.

Mr. Juſt. *Tracy.* If you apprehended him to be a Lunatick, and deprived of his Senſes and Underſtanding, you ſhould have taken more Care of him.

Mr. *Arnold.* It was only at ſome certain Times; perhaps more in the Spring and Fall than at other Times: I never knew he did any Harm before.

Mr. Serj. *Darnell.* Don't you know of any Harm he did to one of his Siſters?

Mr. *W. Arnold.* He hath ſtruck her; I did not ſee him; I was abroad; but when I came home, ſhe complained to me that her Brother had ſtruck her.

Mr. Serj. *Darnell.* What was her Name?—Mr. *W. Arnold. Elizabeth Arnold.* I talked to him about it; he would laugh at it.

Mr. Serj. *Darnell.* Did you take it to be the Effect of Paſſion or Madneſs?

Mr. *W. Arnold.* I don't know any Reaſon he had for doing it.

Mr. Serj. *Darnell.* Did not you apprehend that ſome Care ought to be taken of him?—Mr. *W. Arnold.* My Father was then living; ſo I had nothing to do with him.

Mr. Serj. *Darnell.* What have you known of any thing he hath done to his Father?

Mr. *W. Arnold.* I have known him abuſe him, and call him Names, without any Provocation. And my Father, at the Requeſt of thoſe that were about him, about ten Years ago, ordered me to go to the late Lord *Onſlow*, and deſire him to grant a Warrant; for his Neighbours had adviſed him to ſend him abroad, in hopes that might reclaim him: And at the Bench of Juſtices at *Guildford* he was by them taken up and liſted, as a Marine; he went to the *Baltick*, but did not ſtay long; the firſt Opportunity he ran away, and came home again naked and out of Repair.

Mr. Serj. *Darnell.* I think you was talking of his being ſent on Shipboard.

Mr. *Arnold.* That was when I would have ſent him to *Yorkſhire*; but he would not go.

Mr. Serj. *Whitaker.* Mr. *William Arnold*, you ſay he was ſent abroad by the late Lord *Onſlow*; have you heard him expreſs any Reſentment to my Lord *Onſlow*, by Reaſon of his being ſent abroad?

Mr. *W. Arnold.* I never did hear him myſelf, but I inquired of the Neighbours, who ſaid, that as my late Lord *Onſlow* had ſent him for a Soldier, People would ſay, If you don't behave yourſelf well, my Lord *Onſlow* ſhall ſend you for a Soldier again; and that run in his Head, and he never could get it out again.

Mr. *Marſh.* He came away from his Ship without Leave?

Mr. *W. Arnold.* Yes, I believe he did without any Leave.

Mr. Serj. *Darnell.* Was you never told that this Priſoner threatened my Lord *Onſlow?*

Mr. *N. Arnold.* Never, before this Accident happened.

Mr. Serj. *Darnell.* Not by any Servant of the Houſe?

Mr. *N. Arnold.* I don't know that any body told me he had threatened the Life of my Lord *Onſlow.*

Mr. Serj. *Darnell.* What did the Servants tell you relating to my Lord *Onſlow?*

Mr. *N. Arnold.* That my Lord *Onſlow* had bewitched him.

Mr. Serj. *Darnell.* Did they tell you of any Reſolution he had took upon that?—Mr. *N. Arnold.* No.

Mr. Serj. *Darnell.* Nor of any thing he would do?

Mr. *N. Arnold.* No, I don't know that they did; I don't remember it.

Mary Arnold *ſworn.*

My Lord, I have ſeen the Priſoner ſeveral Times under great Diſorders, inſomuch, that I took him for a Man out of his Senſes at ſundry Times. I have been in the Family eleven Years; and to the beſt of my Knowledge I never heard him ſpeak ſix ſenſible Words together; and after the Death of my Father he left the Houſe. Before the Death of my Father, I went down every Summer. I have ſeen him in great Diſorder. One fine Day in the Summer-Time, his Siſter, his own Siſter, went into the Garden; they kept a Dairy, and the Pots, and the Milk-Pans were out, and he threw a Stick, and ſhe reproved him, Pray, don't you, ſays ſhe, you'll break the Milk-Pans: He catches it up, and threw it at my Siſter, and ſtruck her with it about the Temples; with that, ſhe fell into a Paſſion of Tears, had like to have fainted away; we got Water, and recover'd her; but we were afraid he had prejudiced her Eyes, and that ſhe would loſe the Sight of one of her Eyes.

Mr. Juſt. *Tracy.* What, with any Hurt he had gave her?

Mrs. *Arnold.* Yes, my Lord, and we ſent for Mr. *Thomas Howard*, and he came to us: I don't remember whether it was juſt then, but he came that Day, and let her Blood. After the Hurry and Surprize, I went to him, and reproved him ſeverely, and aſk'd him, How he could do ſuch a wicked Thing to his own Siſter? He laugh'd at me, and I drew back, for fear he ſhould do me a Miſchief. Then I did declare, that I believed that he was, at Times, a Madman. When he ſat at Table, he would not ſit like other People; he would put his Fingers out, and had ſtrange, ſurpriſing, antick Ways, which I never did ſee in any Perſon in my Life before. And after the Death of my Father, he laid at an old Woman's Houſe, that uſed to weed in the Garden, and when ſhe and I have talk'd about *Edward*, the old Woman would ſay, Depend on it, Mr. *Edward* is a Madman.

Mr. Juſt. *Tracy.* It is no matter what ſhe told you, What is your Obſervation?—Mrs. *Arnold.* It was always my Opinion: He would do ſeveral ſurpriſing Things.

Mr. Juſt. *Tracy.* What, you are the Wife of Mr. *Nathaniel Arnold?*

Mrs. *Arnold.* Yes, my Lord, I am.

Mr. Serj. *Cheſhyre.* How long ago is it that you made theſe Obſervations?—Mrs. *Arnold.* I have lived eleven Years in the Family: It is about five Years ſince.

Mr. Serj. *Cheſhyre.* You knew him before?—Mrs. *Arnold.* Yes.

Mr. Serj *Cheſhyre.* How came you to obſerve it then, and not before?

Mrs. *Arnold.* He was always a very ſtrange, unaccountable poor Creature.

Mr. Serj. *Cheſhyre.* But you reaſon'd with him, Why would you throw the Stick at my Siſter?—Mrs. *Arnold.* I did.

Mr. Serj. *Cheſhyre.* Did you talk to him as a Madman? Why would you uſe and talk Reaſon to a Madman?

Mrs. *Arnold.* I uſed to reaſon with him.

Mr. Serj. *Cheſhyre.* Did you never ſpeak to them, that Care ſhould be taken of him, and he ought to be put under ſomebody's Care?

Mrs. *Arnold.* I have often perſuaded my Brother, and Mr. *Arnold* about him: He lived by himſelf; he was not miſchievous out of the Houſe; we never was afraid of him: About his Siſter, that was the only Miſchief he did.

Mr. Serj. *Cheſhyre.* And you reproved him then?

Mrs. *Arnold.* Yes; and after that Time he did not come in Sight of any of the Family.

Mr. Serj. *Cheſhyre.* Did you hear of his Behaviour out of your Sight, that it was in a diſorderly, diſtracted Manner?

Mrs. *Arnold.* I have heard talk ſo.

Mr. Serj. *Cheſhyre.* If you apprehended it to be ſo, would not every body be amazed, that Nobody took Care of this poor Brother?

Mrs. *Arnold.* It was hard to confine a poor Creature; his Father did not think fit to do it. The laſt Time I ſee the Priſoner, he came to my Houſe; it was about a Month before he committed this Fact; and as I was ſitting, he came in at the Back-Door, and in a great Confuſion. I had a Niece with me, that had never ſeen him before; ſays I, Don't be frighten'd at him, he won't hurt you; but he talk'd very much, and look'd extremely wild, and he ſat in a ſtrange manner, and my Maid reprimanded him for ſitting ſo: Says I, Will you have a Diſh of Tea? No, he would have ſome Beer. I ordered them to mix it with ſome ſmall Beer, for fear of making him worſe. He talk'd extremely inwardly; ſays I, Speak out like a Man, if I can anſwer you, I will. He told me he was bewitch'd; he talk'd to himſelf, and I heard him curſe ſeveral Times: Says I, Who hath bewitch'd you? He told me, The Imps. I aſk'd him what he meant by Imps? He told me, they danced in his Room all Night, and he could not lie in his Bed for them, and the Devil did tempt him, and the Imps ſtood by his Bed. After ſome Time, he would have another Mug of Drink, but I would not give it him: I told him, As for this, it is for want of going to Church, and employing yourſelf in good Things. To this he ſaid, My Lord *Onſlow*, Why ſhould I be plagued by him? But, to the beſt of my Knowledge, I never heard any thing about my Lord *Onſlow* before, or of the Perſon he had in his Mind.

Eleanor Arnold *ſworn.*

I believe this poor Priſoner to have been diſtracted for near ſeven Years, and in all that Time, he hath not been capable of forming any Deſign, or plotting any thing againſt any body, but hath lived in a rambling, diſtracted way. The Twentieth of laſt *Auguſt*, he came to the Pariſh Church of St. *Nicholas*, in ſuch a manner, that ſeveral of the Congregation obſerved him to be diſtracted, and told me ſo, and ſpoke of him to me. He then appeared to me in a diſmal Agony, and quite out of his Senſes. The ſame Day, after my Lord *Onſlow* was ſo barbarouſly ſhot, I ſee Mr. Juſtice *Allen*, and aſk'd him, If he had ſeen my Brother? Mr. *Allen* told me he had, and had been with him twice ſince. I aſk'd him, if he thought my Brother to be diſtracted? Mr. *Allen* ſaid, He appear'd to him to be ſo, and to be an Enemy to all Mankind. I aſk'd him, If the Priſoner had given him any Account how he came to do ſuch a horrid Fact? Mr. *Allen* anſwer'd, That this poor Priſoner deſired him ſeveral Times to ſhoot him through the Brains. I know it is reported, that he is not diſtracted, but I affirm it to be otherwiſe: I have ſeen him, for nine Hours together, talk Nonſenſe; ſometimes curſe and ſwear, without the leaſt Provocation: And if your Lordſhip will give me Leave, I can relate ſeveral Facts, as Inſtances of his being diſtracted. My Lord, ſometimes, when we have gone out, he hath got the Fuel, ſwept it up together, and made it up into a great Fire, as if he would fire the Houſe. I have ſeen him take live Coals out of the Wood Fire, and throw them into his Father's Plate: He would often talk to himſelf ſeveral Hours: Sometimes he would be in the moſt tormenting Agonies: And I do declare I have been in terrible Frights, for fear he would do ſome Murder.

Mr. Serj. *Cheſhyre.* If you apprehended your Brother in theſe melancholy Circumſtances, why did not you take Care of him?

Mrs. *Arnold.* We apply'd to the Miniſter of the Pariſh, who was a very good Man, Mr. *Woodward*, and deſired that he would endeavour

to reclaim him: He talk'd to him, but at laſt, he declared, he ought to be put into ſome Mad-Houſe.

Mr. Serj. *Cheſhyre.* When was this?

Mrs. *Arnold.* About five Years ago.

Mr. Serj. *Whit.* Was there any Diſcourſe of applying to a Phyſician, *&c.?* You ſay a Miniſter made uſe of Means to reclaim him, I don't hear of any Phyſician conſulted.

Mrs. *Arnold.* He never had any Phyſician, to my Knowledge.

Mr. Serj. *Whit.* Had he ever any Phyſician, or any Care taken of him, as if he was a Madman?

Mrs. *Arnold.* No.

Mr. Juſtice *Tracy.* He hath ſtruck you?

Mrs. *Arnold.* No, not me, it was another Siſter.

Mr. Serj. *Darnell.* Did you apprehend from any of theſe Circumſtances, that he was like to do Miſchief?

Mrs. *Arnold.* Sometimes I have been afraid of it: He would make a great Fire, and ſhut the Door, and keep us out.

Mr. Serj. *Darn.* You have ſeen him take live Coals, and throw them into his Father's Plate?

Mrs. *Arnold.* I did.

Mr. Serj. *Darn.* Was you not afraid he would have ſet the Houſe on Fire? Had he not Senſe enough to do that?

Mrs. *Arnold.* I believe he had done it, if he had not been prevented.

Mr. Serj. *Darn.* You did not think him ſo mad, as that it was neceſſary to confine him.

Mrs. *Arnold.* I did, in my Conſcience, think ſo.

Mr. Serj. *Darn.* And you did not confine him?

Mrs. *Arnold.* It was not in my Power.

Mr. *Marſh.* How long have you lived at *Guildford?*

Mrs. *Arnold.* Three years at *Guildford.*

Mr. *Marſh.* You can't but have obſerv'd him then often out of Order?

Mrs. *Arnold.* Often ſo, by Fits.

Mr. *Marſh.* One of your Brothers ſays, he uſed to be worſe in Spring and Fall. Did you ever ſend for any Phyſician?

Mrs. *Arnold.* No.

Mr. *Marſh.* If he was ſo Spring and Fall, a little Bleeding would have done him good.

Mrs. *Arnold.* I don't know but it might.

Mr. *Marſh.* Did you ever ſend to your Surgeon to bleed him?

Mrs. *Arnold.* No.

Mr. Serj. *Darn.* Was it the opinion of the Family, that he ſhould be ſent abroad for a Soldier?

Mrs. *Arnold.* It was the Opinion of many of his Friends; but that is eleven Years ago.

Mr. Serj. *Darn.* But he uſed to have his frantick Tricks then?

Mrs. *Arnold.* Yes.

Mr. Serj. *Darn.* Whether did you look upon it, that ſending him for a Soldier would reclaim him, or cure him of his Madneſs?

Mrs. *Arnold.* Some were of Opinion it would.

Mr. Serj. *Darn.* What! cure a Madman?

Mr. *Marſh.* Pray, how long hath your Father been dead?

Mrs. *Arnold.* Five Years, laſt *October.*

Mr. *Marſh.* How long before his Death was this flinging the Coals on his Plate?

Mrs. *Arnold.* I don't know, but I believe it's more than ſeven Years ago.

Mr. *Marſh.* Do you know any thing that ſhould give him this Turn of Mind?----Mrs. *Arnold.* No.

Mr. *Marſh.* Whilſt you have lived at *Guildford*, hath it not been known and heard, that he went a ſporting with a Gun?

Mrs. *Arnold.* Yes, frequently.

Mr. *Marſh.* Did you ever caution any body againſt letting him have a Gun, or Ammunition?

Mrs. *Arnold.* No, I never did.

Mr. *Marſh.* Was he under any body's Inſpection, or Care?

Mrs. *Arnold.* No.

Mr. Serj. *Whit.* Did he not kill Rabbits, and ſell them?

Mrs. *Arnold.* I don't know.

Mr. Serj. *Whit.* Hath he not taken Fiſh, and ſold them?

Mrs. *Arnold.* I don't know.

Mr. Serj. *Whit.* Did you ever apprehend any Danger from his uſing his Gun?----Mrs. *Arnold.* Sometimes we have.

Mr. Serj. *Whit.* How comes it you have not taken it from him?

Elizabeth Arnold ſworn.

Mrs. *Arnold.* My Lord, I have lived with him ſome Years, and for more than ſeven Years I have obſerved him to be mad at ſome Times, though not ſo mad then as he hath been ſince: He was ſo very mad ſometimes, that I was very apprehenſive of being miſchief'd by him; he would have Piſtols and Guns, but I have taken them all away from him. Sometimes he would let off his Gun in the Kitchen, and give no Warning: A great many Times he would ſit and talk to himſelf, and ſwear: Sometimes he would talk to inhuman Creatures in a different manner from what I have heard any body in their Senſes do. About a Month before my Lord *Onſlow* was ſhot, I obſerved, as I could by his Eyes tell when his Fit was coming, I obſerved him to look more wild than ever I ſee him in my Life before. The twentieth of laſt *Auguſt*, he came into the Pariſh Church of St. *Nicholas*, ſtood in the Front of the Congregation, with his Face over his Breaſt, and his Hair in ſuch a diſmal manner, that I ſee ſeveral look at him; and they told me, when I came out of the Church, that my Brother look'd ſo frightful, that they would not meet him for ever ſo much. On the twenty-eighth of *Auguſt* laſt we met Mr. Juſtice *Allen*, and we aſk'd him, if he did not think him diſtracted; he ſaid, He is a great deal ſo, and he appears to be an Enemy to all Mankind; that he would give him no Account why he did this Action, but deſired him ſeveral Times to ſhoot him through the Brains. As to myſelf, the Relation my Siſter, *Mary Arnold*, hath given of it, is true, he had no Provocation from me; ſo far from that, I was afraid of him, and I ſaid, Don't throw the Stick at me: but as ſoon as my Back was turn'd, he took up the Stick, and threw it at me, and afterwards laugh'd at it.

Mr. *Marſh.* Where did he live, when you was afraid of the Danger of his Piſtols and Guns?

Mrs. *Arnold.* Sir, he lived in my Father's Houſe at *Katharine-Hill*, where I lived.

Mr. *Marſh.* Then, I find, when you was in the Family, it ſeems you were afraid of his Guns and Piſtols; How long have you lived at *Guildford?*

Mrs. *Arnold.* More than three Years. I have left off Houſe-keeping five Years.

Mr. *Marſh.* Have you not known him have his Gun at his Command, and that he uſed to go frequently a ſhooting?

Mrs. *Arnold.* I did not know it of myſelf, but I believe he did: He had no Gun of his own, but he uſed to borrow one: When I left off Houſe-keeping, I ſold my Gun, and would not let him have it.

Mr. *Marſh.* Why ſhould you take ſo much Care when you lived together in the Family, and take no Care afterward?

Mrs. *Arnold.* I can give no Account of that; but my Father hath been adviſed ſeveral times to put him into a Mad-Houſe by Mr *Woodward*, the Miniſter of the Pariſh; and Mr. *Woodward* adviſed my Father, in my Hearing, to put him into a Mad-Houſe; for he ſaid he was mad, and nothing elſe would do him good.

Mr. *Marſh.* Do you know this Mr. *Smith?*

Mrs. *Arnold.* No; I don't know that ever I ſaw him in my Life before: I do not know him. When I firſt of heard this horrid Action, body ſaid he was mad.

Eleanor Gittings ſworn.

My Lord, I have believed him to be a Lunatick ever ſince I knew him, which is almoſt nine Years: I was at his Father's Houſe with a Son of my Maſter's; I ſee him do a great many wild Actions; I have heard him ſwear and curſe, fling Things about the Houſe, without any Provocation: I have been often ſurprized at it; but hearing he had never done no Harm, I was paſſive with it. My Miſtreſs hath been at *Katharine-Hill* for four Years laſt paſt, ſix, eight Months at a time.

Mr. Juſtice *Tracy.* What, at that Houſe?

Mrs. *Gittings.* At that Houſe, my Lord; and hath come in at the Back-Door, and ſat in the Kitchen; and ſeveral times I have found him talking to himſelf: I have come in and ſpoke to him, and he hath made no Anſwer. Laſt *March* I went down: My Maſter's Son was ſick, and I ſent for him to go a Fiſhing, to get a little Fiſh. A Day or two after he came in at the Back-Door into the Kitchen, he ſat himſelf down; I deſired he would go a Fiſhing, and get ſome Fiſh for the Child: He ſat in a confuſed Order; and at laſt he told me the Child was well enough. I ſet Victuals before him, but he did not incline to eat or drink, but he was in a great Hurry and Confuſion, more than I have ſeen him before: I was amazed at it, and I aſked him the Reaſon; he told me my Lord *Onſlow* diſturbed him Day and Night; and alſo he had ſent Imps and Devils into his Room, and he had no Sleep, and he was with him whereever he went. I have ſeen him ſince this, and I always found him in great Diſorder, always complaining of my Lord *Onſlow*'s bewitching him, and he had ſent into his Chamber Devils and Imps, and he had no Reſt, and he could not go a Fiſhing, for my Lord *Onſlow* was with him. I inquired at that time whether he had been fiſhing in my Lord *Onſlow*'s Ponds, or had offended his Lordſhip with any thing he had ſaid? No; he knew nothing, but that he was with him perpetually. About *May* he hurt his Arm, by jumping over a little River; and, as I was told, he went to Mr. *Thomas Howard.*

Mr. Juſtice *Tracy.* That's nothing what you was told.

Mrs. *Gittings.* My Lord, I only bring this as a Circumſtance. He went there, and Mr. *Thomas Howard* applied a Plaiſter, and rolled it up. The next Morning he ſent his Man to know how he did: The Man called at a Neighbour's Houſe; it ſeems he did not care to go by himſelf; and when he came into his Room, there he found the Plaiſter and Roll thrown about the Room.

Mr. Juſtice *Tracy.* Did you ſee this?

Mrs. *Gittings.* When I heard of it, I went to him, and enquired why he ſerv'd Mr. *Howard*'s Man ſo, and would not let him do up his Arm? Says he, Mr. *Howard* and his Man are Rogues; they only wanted to make Iſſues in his Arm, and his Arm was well enough, and they ſhould do nothing to it. This I heard him ſay. Some little time after that, I underſtood that Mr. *Waite*'s Rooks had offended him, by the Noiſe they made in the Night, that he could not ſleep for them. I have heard abundance of Stories that I muſt not repeat here; ſo will only tell you ſome. He came one Day into the Kitchen, and ſitting in a diſconſolate Manner, I aſked him how he did? He told me he was bewitched and diſturbed, and Mr. *Waite*'s Rooks made ſuch a Noiſe, that he could not ſleep, nor be at Peace Day nor Night: I told him he had uſed Mr. *Waite* ill: He ſaid he had no more Buſineſs to keep Rooks than he; and Mr. *Waite* is a Rogue, and Nobody loves him; and he knew his Wife did not love him. This he told me, and ſaid they had diſturbed him all Night and Day; and was then upon the Story of my Lord *Onſlow* again; I thought he had got out of one into another.

Mr. Juſtice *Tracy.* When was this?

Mrs. *Gittings.* After *May*, between *May* and *June*, in the Middle of *June*, I believe. After this was over, that the Rooks were done with, and got out of his Head, then he begins with my Lord *Onſlow* a-freſh; then I often heard that he complained of my Lord *Onſlow*'s plaguing him Day and Night.

Mr. Serj. *Cheſh.* Don't tell what you have heard from other Folks.

Mr. Serj. *Whit.* Did not you live with Mr. *Edward Arnold?*

Mrs. *Gittings.* I live now with Mr. *Nathaniel Arnold.*

Mr. Serj. *Whit.* Did you ever hear the Priſoner threaten my Lord *Onſlow*, or his Life?

Mrs. *Gittings.* Never his Life, nor nothing like it.

Mr. Serj. *Whit.* Did you never tell one of theſe Brothers that you have heard him thus threaten my Lord *Onſlow?*

Mrs. *Gittings.* No, I never did hear him threaten my Lord *Onſlow.*

Mr. Serj. *Whit.* Did you tell any thing of the Priſoner?

Mrs. *Gittings.* Yes: I told my Maſter's Brother that I was in a great

Fright about the Priſoner; that I believed him much worſe than ever I ſee him; and much feared he would do himſelf a Miſchief.

Mr. Serj. *Whitaker*. What Anſwer did he make?

Mrs. *Gittings*. My Maſter's Brother ſeemed ſurprized.

Mr. Serj. *Whitaker*. Did not he ſay, Mind your own Buſineſs, you have nothing to do with it; or to that Purpoſe?

Mrs. *Gittings*. No; I know nothing of it that he ſaid ſo. I have a great deal more to ſay, my Lord. My Miſtreſs and I coming from Church one Day, ſome time before he ſhot my Lord *Onſlow*, and coming from Church, a Shower of Rain drove my Miſtreſs into the Houſe of his Landlady; I was with her: The Landlady came, and my Miſtreſs aſked where the Priſoner was? She ſaid he was within: My Miſtreſs told her that ſhe was very angry with him, and did not deſire to ſee him; ſhe was very angry that he ſhould go away with Mr. *Fawks*'s Horſe. His Landlady told my Miſtreſs, He is certainly mad, and it was not to be minded what he ſaid or did.

Mr. Serj. *Cheſhyre*. What you have heard goes for nothing.

Mrs. *Gitting*. I was to ſee the Priſoner in the Gaol in *Southwark* the 23d of laſt Month, being the firſt time I ever ſaw him ſince he ſhot my Lord *Onſlow*: I found him in great Diſorder then, and I aſked him How he came to do ſuch a wicked thing? He gave me no Anſwer, or none that I could make any thing of. I aſked him If any Body had ſet him to do it? and he told me it was one *Swetman* and *Thomas Farmer*; which I knew to be two little Boys: I wondered at his Anſwer. I aſked him how he did, and told him the Time drew near for his Trial: He took no Notice of that; he ſaid there was a great Plague in the World; and alſo that he knew not how it came; but repeated it, God take his Soul, if he knew how the Plague came, or any thing about it: But abundance of times theſe Words were repeated.

Mr. Serj. *Cheſhyre*. What Words?

Mrs. *Gittings*. God take his Soul, if the knew how the Plague in the World came. I enquired what he meant by it? He told me the Wickedneſs of wicked People had occaſioned it, and there would be great Mourning in all the World. I enquired what he thought would become of him if he was to be tried and condemned? He told me he ſhould have a Fortnight's Time to go where he would, and do what he would: Then every Body would be eaſy, and all would be at Peace. This was on *Saturday* laſt; and he repeated the Words, God take his Soul, if he knew any thing of the Plague in the World, or any thing about it.

Mary Martin *ſworn*.

Mr. *Edward Arnold* was in my Houſe, which People ſaid was mad: *Ned Arnold*, mad *Ned Arnold*. People would give him that Report; or crazy *Ned Arnold*. *Ned Arnold* was in my Houſe, and accordingly called for a Mug of Beer. And pleaſe you, I keep a Publick Houſe. When I had fetched him a Mug of Beer, he ſat himſelf down by the Fire; he fell a ſwearing and curſing, and ſwore that my Lord *Onſlow* was in his Belly. Says I, *Ned*, what makes you ſwear, and curſe my Lord *Onſlow* ſo? It is Pity, *Ned*, but my Lord ſhould know it; if he knew he was in your Belly, he would quickly come out of it. Says I, If you will have, *Ned*, a Chariot, you and I will go to him. Then we concluded what time to go, which was about eight or nine o'Clock the next Morning, to go to my Lord *Onſlow*'s, and tell him he was in his Belly. Accordingly he got out of his Chair, and took a Knife, and ſwore he would carry that with him. I tell you nothing but what is true. So then comes in *Harry* ———, Mr. *Flutter*'s Man that belongs to the Horſes. He comes in with a Whip in his Hand. I ſaid, *Harry*, will you go and aſſiſt *Ned* and I to my Lord *Onſlow*'s, and tell my Lord that he is in *Ned*'s Belly? Then ſeveral came in, ſeveral Carriers to drink at my Houſe: And this ſame Man fell a laughing heartily. I ſaid, *Harry*, will you go? Yes, ſays he. But, ſays I, *Ned Arnold* talks of carrying a Knife. No, ſays he, if you carry a Knife, we may carry you there, but my Lord will take Care of us, and ſend us to the Houſe of Correction. Ay, ſays I, and hang you too. He had been in my Houſe twice before. I will leave nothing that I can remember.

Soll. for the Priſoner. I deſire ſhe may be aſked, whether he did not open his Boſom, and bid her feel for my Lord *Onſlow*?

Mrs. *Martin*. Some time before he came to our Houſe, and ſat ſcratching his Boſom, and feeling and looking down into his Boſom, curſing and ſwearing, and he ſaid my Lord *Onſlow* was in his Boſom, and he had ſuch an Influence over him, that he could neither eat, nor drink, nor ſleep, or be at Eaſe for him.

Mr. Serj. *Comyns*. You ſpoke of carrying a Knife; Did you aſk him the Reaſon why he would carry the Knife?

Mrs. *Martin*. No, I did not.

Mr. Serj. *Comyns*. Did you apprehend that he deſigned any Miſchief?

Mrs. *Martin*. No, I had no Thoughts about it; I only talked in a jokerly Way. And it pleaſe you, my Lord, he was there looking in his Boſom. One time he comes, ſays he, There is *Sukey Monneux*, my Lord *Onſlow* is got into *Sukey Monneux*'s Belly. I did not know there was ſuch a Gentlewoman. Says he, He is ſuch a Plague to her, that ſhe cannot eat, drink, or ſleep. Says my Daughter, about eighteen or nineteen, not twenty Years old, Can't you ſhit? Becauſe he had ſaid he could not eat or drink. If I ſhit, ſays he, it won't ſtink like another Man's Turd. My Lord, it is true. I think I have nothing more to ſay.

Swetman *ſworn*.

I took him to be a crazy Sort of a Fellow, not to be in his Senſes at all Times. He would ſay he was plagued with the Buggs and Bollies, that he could not reſt a Night; he was fain to ſtop his ears with the Rugg, or he could not ſleep. In the Morning ſometimes he hath aſked me whether I could reſt? I told him, Very well. I aſked him, How he reſted? Says he, I am plagued with the Buggs and Bollies. He lodged at my Houſe fifteen Months.

Mr. Juſtice *Tracy*. How long ago is it ſince he lodged at your Houſe?

Swetman. He lived there till this Accident happened.

Mr. Serj. *Whitaker*. Did not you lend him a Gun?

Swetman. Not at that Time: I did uſe to lend him a Gun in the Winter, to ſhoot Sparrows, *&c.* but I did not lend it him at this Time that this happened.

Mr. Serj. *Whitaker*. Why did not you take the Gun away from him? This very Gun that he ſhot my Lord *Onſlow* with, did not you lend him?

Swetman. I did not lend it him at that Time: I did ſay he might have the Gun to go out.

Mr. Serj. *Whitaker*. You gave him Leave to have this Gun; then I aſk you, Would you lend a Madman your Gun?

Swetman. I take him to be worſe ſometimes than other, as in *Spring* and *Fall*.

Mr. Serj. *Whitaker*. Did you take him to be ſenſible at this Time?

Swetman. He is more ſenſible in the Winter.

Sollicitor for the Priſoner. My Lord, I deſire he may be aſked, Whether he did not hear him ſay any thing of my Lord *Onſlow*; that my Lord *Onſlow* had been there with his Wife? Or what he heard paſſed between this Man's Wife and my Lord *Onſlow*?

Swetman. He ſaid, My Lord *Onſlow* had brought a Hamper of Wine into the Kitchen, and ſat it on the Dreſſer over Night, and when he roſe in the Morning, the Wine was drank out of the Hamper, and the empty Bottles were upon the Dreſſer. When I have come home, It is true, ſays he, my Lord hath been friggetting here, and my Lord keeps Company with your Wife, and your Houſe is diſturbed, they keep dancing above Stairs, that I can't reſt. I have opened the Kitchen Door, to ſhow him that it was not ſo; that there was no Hamper nor Bottles there.

Mr. Serj. *Whitaker*. Pray, give an Account when he had your Gun at firſt?

Swetman. Sir, I can't do it.

Mr. Serj. *Whitaker*. I aſk you, where your Gun was at that Time?

Swetman. It was at my Houſe.

Mr. Serj. *Whitaker*. What Gun had he when he ſhot my Lord *Onſlow*?

Swetman. It hath been reported that it was my Gun.

Mr. Serj. *Whitaker*. How came he by that Gun?

Swetman. I will tell you how he might come to have the Gun: I was at Mr. *Waite*'s, hooing of Turnips, before this happened; ſays Mr. *Waite*, Can you catch my Conies? Says I, I believe ſome can do it better than I: Says he, I will give Sixpence a Coney to any Body for catching of them. When I came home, I happened to drop a Word about it; my Boy was by; ſays he, *Ned*, ſhall you and I go and catch Conies? Says he, I have never a Gun: Says he, You may take my Father's Gun; and, ſays the Boy, We will go Halves.

Mr. Serj. *Whitaker*. Then you left the Gun, as he might take it?

Swetman. I did not lock it up.

Mr. Serj. *Whitaker*. How came you to let a Gun be ſo in the Way, as he might come at it, if you apprehended him to be a Madman?

Swetman. In former Times he did carry a Gun, and he came of a good Family: I thought I might let him have a Gun, when I ſee him in his Senſes.

Mr. Serj. *Comyns*. You ſay this Diſcourſe about giving Sixpence to kill Conies, gave occaſion that he had your Gun?—*Swetman*. Yes, Sir.

Mr. Serj. *Comyns*. Did he hear you ſpeak it, that ſuch a one would give Sixpence, *&c.*

Swetman. Not to my Knowledge; but my Boy took it up, and told him him the next Day.

Mr. Serj. *Cheſhyre*. Pray, This Story you tell us about a Hamper of Wine, when was it?

Swetman. A pretty while before this happened.

Mr. Serj. *Cheſhyre*. What do you call a pretty while?

Swetman. I believe it might be half a Year.

Mr. Serj. *Cheſhyre*. Did not he uſe to have the Key of your Houſe to go in and out as he pleaſed?

Swetman. We had two Keys; he had a Key, but we could bolt the Door, and keep him out of the Kitchen: I was afraid he would fire the Houſe.

Mr. Serj. *Cheſhyre*. He might come in and out when he would?

Swetman. We did not truſt him with that Liberty to go into the Kitchen.

Mr. Serj. *Darnell*. Did you truſt a Man in your Houſe, that you was afraid would fire it?

Swetman. He could not come to that Place where the Fire was.

Mr. Serj. *Darnell*. You was often frightened leſt ſuch a Thing ſhould happen?

Swetman. I was going to turn him out: I told my Wife, This Fellow is ſo mad, that we can't keep him any longer; he is fit to go to *Bedlam*.

Mr. Serj. *Comyns*. Did you hear him ſpeak of my Lord *Onſlow*?

Swetman. He hath been railing ſome Time. When my Boy was alone with him, he aſked my Boy for my Hog-Knife; the Boy aſked him, what he would do with it? And he ſaid, He would kill himſelf.

Mr. Serj. *Comyns*. Did you hear this?

Swetman. I did not hear him ſay it, but my Boy told me when I came home.

Mr. Serj. *Comyns*. Did you ever hear him ſpeak by way of threatening my Lord *Onſlow*?

Swetman. Sometimes he would halloo as an Owl doth; ſometimes he would ſay Cuckoo.

Mr. Serj. *Comyns*. Have you ever heard him threaten my Lord *Onſlow*?

Swetman. I have heard him curſe and damn my Lord *Onſlow*.

Mr. Serj. *Comyns*. Have you never heard him threaten him?

Swetman. One Time, about a Twelvemonth ago, he ſaid he would ſhoot my Lord *Onſlow* at the Horſe-Race, and looked very wild.

Mr. *Marſh*. What Horſe-Race? *Guildford* Horſe-Race?

Swetman. I took it to be ſo.

Mr. *Marſh*. Did he ſay he would ſhoot him at the next Horſe-Race? Or he would have ſhot him at the former Horſe-Race?

Swetman. I took no further Notice of it; for I took him to be a crazy Fellow.

Mr. *Marſh*. But what did he ſay?

Swetman. He ſaid he would ſhoot my Lord *Onſlow* at the Horſe-Race.

Mr. *Marſh.* When was this? Before the Horſe-Race?

Swetman. It was in *May* was Twelvemonth: There was one Horſe-Race paſſed: I never heard he did motion it.

Mr. *Marſh.* You ſay this was *May* was Twelvemonth; How often hath he had the Uſe of your Gun ſince?

Swetman. I don't know how often, becauſe I did not mind: He never did no Harm.

Mr. *Marſh.* Hath he had it ſeveral Times?

Swetman. He hath had it ſeveral Times.

Mr. Serj. *Whitaker.* Had he not the Gun whenever he would?

Swetman. No; I uſed to carry it to *Woodbridge*, to ſhoot Sparrows.

Mr. *Marſh.* Did not you bring the Gun Home again?---*Swetman.* Yes.

Sollicitor for the Priſoner. My Lord, as to the Time of his taking the Gun, to go to ſhoot Mr. *Waite*'s Conies, Whether it was not the ſame Morning that my Lord *Onſlow* was ſhot?

Mr. Juſtice *Tracy.* He tells you he was not at Home.

Sol. According to his Information, whether it was not at that Time?

Mr. Juſtice *Tracy.* He ſaid he did not lend him his Gun then, but he had it then.

Sol. Whether the Lane, in which this Fact was committed, doth not lead to Mr. *Waite*'s Turnip-field, where the Conies were?

Swetman. It lays the ſame Way, and my Wife thought he went, becauſe my Wife ſee him, and had lent him Money to buy the Shot to ſhoot the Conies with.

John Dedman *ſworn.*

Mr. Juſtice *Tracy.* What do you know of this Man?

Dedman. I know him to be a Madman.

Mr. Juſtice *Tracy.* Why?

Dedman. By reaſon my Lord *Onſlow* was always in his Mind; he was always troubled with my Lord *Onſlow*; he could never take no Reſt, the Devils and Buggs troubled him ſo. In the next Place, he rented a Houſe, he had neither Goods, nor Beds, nor Chairs, either to ſit or lie down upon; he had nothing to lie down upon. He would come to the Houſe, and he would beat them all out of the Houſe: I have been called from my Work, to make Peace among them.

Mr. Juſtice *Tracy.* What Houſe? To whom was this?

Dedman. To his Friends, to his Siſters.

Mr. Juſtice *Tracy.* How long ago is this?

Dedman. About five or ſix Years ago.

Richard Wheatly *ſworn.*

Wheatly. I have ſhaved him theſe two Years, and he hath come into the Shop ſometimes ſo that I have been afraid to ſhave him: Sometimes he would come in, and go out again, and hath ſpoken never a Word.

Mr. Juſtice *Tracy.* Why have you been afraid?

Wheatly. Becauſe he hath ſwore all the Time I have been ſhaving him.

Sollicitor for the Priſoner. My Lord, I deſire he may be aſked, Whether he did not uſe to deſire him to cut his Throat?

Wheatly. One Time, as I was ſhaving of him, he ſaid, Dammee, cut my Throat.

Mr. Serj. *Cheſhyre.* I ſuppoſe, at that Time, you had given him a Nick; I aſk you, Whether he ſaid, Cut my Throat? Or, You will cut my Throat?

Wheatly. He ſaid, Damn you cut my Throat.

Mr. Serj. *Whitaker.* What Anſwer did you make?

Wheatly. None: I was afraid.

Mr. Serj. *Whitaker.* Did you take every Man for a Madman, that ſwore when you cut him?

Tydie *ſworn.*

Tydie. I have known *Edward Arnold* for ſeveral Years; and I never knew but that he was a crazy Sort of a Man.

Mr. Serj. *Whitaker.* What do you mean by a crazy Man?

Tydie He had ſeveral fooliſh Expreſſions.

Mr. Serj. *Whitaker.* Did you take him to be a diſtracted Man?

Tydie. Sir, I could not take him to be otherwiſe.

Sollicitor for the Priſoner. My Lord, I deſire he may be aſked, Whether he heard him expreſs himſelf about the Buggs, and Bollies? Or, Whether he propoſed to take his Gun, and ſhoot himſelf?

Mr. Juſtice *Tracy.* Did you hear him talk about the Bollies?

Tydie. I heard him ſy, that the Bolleroys, and the Plagues plagued him ſo, that he could not take his Reſt at Night.

Sol. Whether he deſired that he might take his Gun, and ſhoot himſelf?

Tydie. I have ſeen him ſeveral Times.

Mr. Juſtice *Tracy.* Did he ſay he would take his Gun, and ſhoot himſelf?

Tydie. I can't ſay that; I don't know it, I never heard it: I have heard him ſit, and rail, and ſwear, and damn to himſelf.

Sol. I deſire he may be aſked, If he hath ever heard him ſay any Thing about any Tranſaction between my Lord *Onſlow* and this *Swetman*'s Wife?

Tydie. I have heard him ſay, that my Lord *Onſlow* was one Night there, at *Swetman*'s Houſe, and he drank out a Hamper of Wine there; and they had Fiddles, and danced; and he ſaid, one *Sentiman* played to them: And when he came down in the Morning, there was the empty Bottles upon the Table.

Thomas Poulter *ſworn.*

Poulter. I ever took the Man to be not as another Man; he was always out of his Mind.

Mr. Serj. *Whitaker.* How long have you known him?

Poulter. Sir, I have known him theſe Nine Years. One Time he came *in* in a Paſſion where I was, and ſaid he would kill me.

Mr. Serj. *Whitaker.* What was the Reaſon?

Poulter. I know none at all; but it paſſed over, and he never did me any Harm, or any Wrong. About a Fortnight before this was done, I was working in the Field, and he came to me, and looked mighty melancholy; he ſwore and curſed, and he ſaid at laſt, Damn *Tom Onſlow*; and I aſked, how my Lord *Onſlow* had hurt him? He ſaid, he had bewitched him four or five Years ago, and he had *had* nothing gone through him never ſince, and he ſhould never be able to go up *May* Hill. This was about a Fortnight before this Accident happend.

Mr. Serj. *Whitaker.* Where do you live?---*Poulter.* At *Godalming.*

Mr. Serj. *Whitaker*, Did you give any of his Relations Notice of this?

Poulter. A great many People knew of this: He ſaid, he wiſhed he could ſee him to ſcratch him to fetch Blood of him, becauſe he had bewitched him, and he would go to the King, and know the Reaſon, why my Lord *Onſlow* plagued him ſo.

Mary Morris *ſworn.*

Morris. My Lord, I have known him almoſt theſe five Years; I always thought him mad, by his mad Actions, as I have ſeen him in; he hath often come in at his Siſter's Houſe, and hath ſat himſelf down, and hath talked to himſelf; and hath ſwore, and curſed, and talked of the Plague, and would look one Way and t'other, and talked to himſelf: He would ſit ſo an Hour together, and then he hath got up, and gone away, when his Siſter hath not been at Home. On the *Saturday* before he ſhot my Lord *Onſlow*, he came and aſked for ſome Small Beer: My Miſtreſs was not at Home; I fetched him ſome; he ſat himſelf down, grinned his Teeth, and had ſuch Actions; looked one Way and t'other, and without any Provocation curſed and ſwore, and talked of Plagues. I was ſo frightened, I called my Fellow-Servant into the Room; I was afraid to ſtay with him.

Mr. Juſtice *Tracy.* Did he ſhew any Marks of Rage?

Morris. Yes, my Lord.

Mr. Juſtice *Tracy.* What did he do, beſides grinning his Teeth?

Morris. He did not ſay much: he looked about, and talked to himſelf.

Mr. Juſtice *Tracy.* How did he talk?

Morris. He talked to himſelf.

Mr. Juſtice *Tracy.* How?

Morris. Oh! very wildly; with his Eyes looking one Way and t'other.

Mr. Serj. *Whitaker.* Was he curſing at any body in particular?

Morris. Not as I heard; I did not hear him mention any body's Name.

Sollicitor for the Priſoner. My Lord, I deſire this Witneſs may be aſked, What Tranſaction ſhe ſaw in the Man, and what Directions ſhe received from the Keeper, in the Houſe of Correction?

Morris. I carried him Victuals every Day, while he was there: He ſaid very little to me, but behaved himſelf much as he uſed to do. The Gaol-Keeper, Mr. *Flutter*, and *John Pullen* told me, that my Miſtreſs ſhould not cut him Victuals with Bones, nor they would not let him have a Knife; they were afraid he would make away with himſelf; they ſtripped the Meat off from the Bones, before they gave it him: The good Woman of the Houſe where he lodged, and the Boy went with me to ſee him; ſays he, *Joe*, How do you do? Do the Plagues and Bollies plague your Houſe as they uſed to do when I was there? And the Boy laughed at it.

Stephen Fachin *ſworn.*

Sollicitor for the Priſoner. My Lord, I deſire he may be aſked, Whether he hath not found him laid in a Lodge all Night in the Air?

Fachin. My Lord, I found him in *Looſley-Lodge*, and there he was when I went to work upon a Place, where there is none but hard Timber.

Mr. Juſtice *Tracy.* When did you find him there?

Fachin. I can't remember the Time.

Mr. Juſtice *Tracy.* Was it Night or Day?

Fachin. It was in the Morning.

Mr. Juſtice *Tracy.* Had he been there all Night?

Fachin. As far as I know, he had.

Mr. Serj. *Cheſhyre.* How long ago is this?

Fachin. About two Years ago.

Mr. Serj. *Cheſhyre.* What Time was it?

Fachin. It was in the Morning about ſeven o'Clock; we went to mend the Tiling of the Lodge; I can't tell the Time of the Year it was.

Mr. Serj. *Cheſhyre.* About what Work was you about?

Fachin. Mending the Tiling of the Lodge: It was the Spring of the Year.

Mr. Serj. *Cheſhyre.* About *Lady-Day?*

Fachin. It was then about.

Mr. Serj. *Cheſhyre.* Did you aſk whether he had been there all Night?

Fachin. No; I did not find him at firſt, but he popped his Head out: When I found that, I looked up, and heard a Man cry, Don't meddle with my Tobacco: I was ſurprized at it.

Mr. Serj. *Cheſhyre.* Who brought you here?---*Fachin.* I was ſubpœna'd.

Mr. Serj. *Cheſhyre.* Who brought you?---*Fachin.* Mr. *Arnold.*

Mr. Serj. *Cheſhyre.* Which of them was it?

Fachin. I don't know both; Mr. *Arnold*, of *Katherine-Hill.*

Mr. Serj. *Cheſhyre.* Had you any Promiſe of any Money, or any Thing elſe, if you could ſwear him a Madman?--*Fachin.* No, my Lord.

Mr. Serj. *Cheſhyre.* Were you not told, it ſhould be worth Thirty or Forty Shillings to you, if you could prove him a Madman?

Fachin. I had nothing promiſed me.

Mr. Serj. *Cheſhyre.* I aſk you, Whether they ſaid, It ſhould be worth ſo much to you?---*Fachin.* No.

Mr. Serj. *Cheſhyre.* Did Nobody ſay ſo to you?---*Fachin.* No.

Mr. Serj. *Whitaker.* Have you not declared that this *Arnold* was a Rogue, and no Madman?

Fachin. I believe he is a Lunatick Man.

Mr. Serj. *Whitaker.* I aſk you, Whether you have ever declared that you believed him a Rogue, and no Madman?

Fachin. I believe I always took him to be a Madman.

Mr. Serj. *Darnell.* Did you never ſay to any body, that it was your Opinion, that he was not mad, but a Rogue?

Fachin. Sir, I never ſaid any ſuch Thing in my Days: No, indeed, I did not.

Mr. Serj. *Whitaker.* Did you not ſay ſo to one *Sentiman?*---*Fachin.* No.

Mr. Serj. *Whitaker.* Had you no Diſcourſe about it?

Fachin. No, no.

Robert Dandy *ſworn.*

Dandy. My Lord, I have known him a great many Years; I lived near his Father's; I never thought him any Thing but a crazy Man, ſeldom in

in his Senſes: His Father hath ſent for me ſeveral Times, to deſire him to be civil: for he would be ready to beat his Siſters and his Father out of Doors: I told him, if he would not be civil, I would ſend him for a Soldier. I had him before a Juſtice of Peace, to frighten him, but he was as bad when he came home again.

Mr. Juſtice *Tracy*. Did you hear him threaten to turn his Father and Siſters out of Doors?

Dandy. I did not hear him: He abuſed his Father, and I had him before a Juſtice of Peace; I was Conſtable.

Mr. Serj. *Cheſhyre*. Did you take this to be a Carriage to a Madman, or to a wicked Man, to reclaim him?

Dandy. I did not take him to be in his Senſes.

Mr. Serj. *Cheſhyre*. Why did you carry him before a Juſtice? Was he not a wicked Rogue, an untoward Boy? Was not that the Reaſon why his Father ſent him for a Soldier? Do you uſe to ſend Madmen for Soldiers?

Mary Swetman *ſworn*.

Soll. for the Priſoner. This is the Wife of —— *Swetman*.

Mr. Juſtice *Tracy*. What have you to ſay? What is your Opinion of the Priſoner?

Swetman. I really think he is a Madman, and not in his right Senſes.

Mr. Juſtice *Tracy*. He lodged at your Houſe?

Swetman. He lodged at my Houſe.

Mr. Juſtice *Tracy*. When? About this Time that this Accident happened?

Swetman. Yes, my Lord: Though when he came to my Houſe, I took him to be a pretty ſenſible Man. After a little Time, he grew very mad; and one *Sunday* Morning he got up, and walked out with my Son up the *Chapple-Hill*, and when he was upon the Hill, he ſaid to my Son, *Jo*, I won't come to your Houſe.

Mr. Serj. *Cheſhyre*. Was you there?---*Swetman*. My Son told me ſo.

Mr. Serj. *Cheſhyre*. That won't do.

Swetman. He ſaid he would not come to my Houſe any more: It rained that Night, but he did come, and went to Bed. The next Day he went a walking, but I don't know where: At Night he came home; I heard him come home: About Nine, I deſired him to come in, and go to Bed, becauſe my Huſband was not at home: He ſaid, He come in, he would not come in, I had got Rogues hid in the Houſe; and I ſaid, No, Mr. *Arnold*, or *Edward*, or *Ned*, I can't tell which; he ſtepped over the way with ſuch a Fury, and ſaid, He would not come in To-night; I thought he ſhould not come in to frighten me; I locked the outward Door; he had a Key, ſo had I, and I bolted the middle Door, that when he got in at the outward Door, he ſhould come no further. At Two o'Clock in the Morning he comes to the Door, and ſat there 'till the Clock went Three, then he came in; I finding him there, got up, and opened the middle Door; he went to Bed, ſaid nothing to me, or I to him, but looked out of Humour, in a wild, ſtaring, diſtracted way: A little while after, my Huſband came home, and as he ſat by the Fire, he came to him; *Stephen*, ſays he, you are a pains-taking Man, but you have a bad Woman for your Wife, and he made me out as if I was naughty to my Huſband; ſays he, She hath ſuch Rackettings and ſuch Doings here; ſhe hath had Men above Stairs, fed them with Victuals, and I could not reſt for them. He ſaid, He came down one Morning, and he ſaw a Hamper and Bottles of Wine ſtanding upon the Dreſſer, as my Lord *Onſlow* and I had drunk out, and he had been there friggetting; and I was in a Paſſion, and my Huſband ſaid, I was to blame to take Notice of him, for we took him for a Madman.

Sometimes I have deſired him to read a Chapter in the Bible, when my Huſband hath been abroad, to paſs away the Time, till my Huſband hath come home, which he did ſenſibly; I deſired him to read another, he did it very ſenſibly. Another Time, as he was ſitting down on the Couch, by the Fire-Side, I ſee him look very wild, and I came to him, and ſaid, Come take the Bible, and read, and put all theſe abominable, wicked, diſtracted Things out of your Mind; he gave me no Anſwer, but took the Bible out of my Hand, and looked in it, and ſwore and railed, and ſaid ſuch Things as I am ſure could not be in the Bible, and he looked very wild and very mad.

Mr. Serj. *Cheſhyre*. How long was this before this Accident happened?

Swetman. I can't tell how long, it was within the Time he was at my Houſe.

Sollicitor for the Priſoner. Pleaſe to aſk her about the Rugg at her Houſe.

Mr. Juſtice *Tracy*. What do you ſay relating to a Rugg?

Swetman. One Morning, in a raging Condition, I heard him ſwear, that he had pulled my Rugg to pieces, and had ſtopped his Ears with it. When he came down Stairs, he came raving, and pulling the Stuff out of his Ears, and raving at the Bollies and Bolleroys, and I know not what, and ſaid, The Bollies plagued him, and he thought my Lord *Onſlow* plagued him.

Sollicitor for the Priſoner. My Lord, I humbly beg the Favour, that ſhe may be aſked, relating to the Tranſaction that Morning, when this unhappy Accident happened, that ſhe would give your Lordſhip an Account, if you pleaſe to aſk her, whether he lay at home that Night, and what paſſed between her and her Son, relating to Mr. *Waite's* Conies? And whether ſhe did not mention, that Mr. *Waite* would give Sixpence for every Coney they catched, becauſe they eat his Turnips?

Mr. Juſtice *Tracy*. You would have me to aſk theſe Queſtions? Did he lay at home that Night?

Swetman. My Lord, he did not lay at home that Night; I never heard nor ſee him till about Six o'Clock; he took a Baſket of mine, and went to *Guildford*, and bought a Loaf; in the mean Time, I got up, and he, to the beſt of my Knowledge, aſked me, Whether I had ſeen or heard any thing of the Fox-Hounds? and I ſaid, No, don't trouble me, I have ſomething elſe to mind: That was in the Morning, after he came from *Guildford*.

Soll. Did you hear him ſay any thing about *Waite's* Conies?

Swetman. Yes; after he came home, he aſked me if I had heard or ſeen any thing of the Fox-Hounds; and he looked ſadly wild and indifferent. He went out of Doors, and came in again; ſat down, and got up again, and was very untoward. My little Boy came in, and aſked him, Whether he would go and ſhoot Mr. *Waite's* Conies? For my Boy ſaid Mr. *Arnold* ſhould ſhoot them, and he would bring them to him; and Mr. *Arnold* ſaid, he had no Powder nor Shot, nor Money to buy any. And my Child ſaid, I will go with you, and aſk my Mother. So Mr. *Arnold* aſked me to lend him a Shilling; and I did lend him a Shilling's worth of Halfpence; and my Child wanted to go with him to *Guildford* to buy this Powder and Shot: I ſaid, he ſhould not go, but he ſhould go to School; and Mr. *Arnold* was to go to *Guildford* and back again.

Soll. Did he borrow it to buy Powder and Shot?

Swetman. He borrowed it to buy Powder and Shot, to ſhoot the Conies, ſo far as I know.

Soll. Did he give that as a Reaſon?

Swetman. Yes; my Child was to go with him; and he was overjoyed that he was to go with him to ſhoot the Conies.

Mr. Juſtice *Tracy*. Then he went away, and came home again?

Swetman. Yes.

Mr. Juſtice *Tracy*. How far do you live from *Guildford*?

Swetman. About half a Mile. After he had got Powder and Shot, I ſee the Gun ſtanding in one Corner in the Kitchen. At laſt I thought he had not a Mind to go and ſhoot the Conies. He was gone out of the Door; a Man and a Woman came and deſired me to ſtand at my Door, there was a Horſe and a Hamper coming by; I uſed to buy Fiſh of them as they went by. I deſired Mr. *Arnold* to ſtand at the Door, while I went up to dreſs. I took it he would ſtand at the Door while this Horſe and Hamper went by. To the beſt of my Knowledge, he ſaid he would. I went up. Afterwards he came, and ſaid, Are you coming down? I ſaid, No: But I ſaid, If you want to go, you may go. I thought him a truſty Steward. So he went away. I looked to ſee which way he went. He went up the Lane towards Mr. *Waite's* Turnip-field. Then I went away to dreſs my Head. I was but juſt gone, but I heard the Gun go off. Thinks I, this Man hath ſhot ſomething in the Lane. When I looked, I ſaw ſome Gentlemen, and ſome Horſes, and Nobody upon them. Then I thought he might have frightened the Horſes, that they had thrown the Gentlemen. Immediately one came to me, and ſaid, Dame, bring a Chair; Which I did. And I ſaw a Gentleman was ſhot: He was wounded and bloody. Somebody ſaid, Have you got ſome good Brandy, or fair Water? I went and fetched both. When I came again, I did not know that this was my Lord *Onſlow*.

Mr. Serj. *Whitaker*. Had you heard him ſay any thing that Day, or before, threatening my Lord *Onſlow*?

Swetman. Yes; I have heard him ſay, he would kill my Lord *Onſlow*.

Soll. for the Priſoner. And Nobody elſe?

Swetman. He hath ſaid he would kill me; and he hath threatened to kill *Sentiman*; and he hath threatened to kill my Child; for you are plagued, and I am plagued, and your Child is bewitched, he ſaid.

Mr. *Marſh*. Where did this Gun ſtand?

Swetman. It ſtood ſometimes in one Place, and ſometimes in another.

Soll. for the Priſoner. I beg leave to examine a Witneſs or two, to confirm this Witneſs's Evidence.

Eleanor Arnold *called*.

Mr. Juſtice *Tracy*. Did you hear what this Witneſs ſaid?

Eleanor Arnold. Yes; ſhe related the ſame thing to me.

Mr. Juſtice *Tracy*. How long ago?

Eleanor Arnold. About a Fortnight ago.

Mary Arnold. And ſhe gave me the ſame Account.

Mr. Copeland *ſworn*.

My Lord, I was with him in the *Marſhalſea*. I aſked him, What could induce him to murder my Lord *Onſlow*? He made me little Anſwer at firſt; but at laſt he ſaid, My Lord *Onſlow* had bewitched him; and if he had any Money in his Pocket, he could not ſpend it in any Quiet; my Lord *Onſlow* troubled him, and run in his Head, that he was never eaſy, nor never quiet. I aſked him, Whether any body had put him upon this Action? And he heſitated pretty much at firſt, and afterwards he ſaid, No; nobody had put him upon it. I went afterwards once more to him in the *Marſhalſea*, and I aſked him again, Whether any body had put him upon doing this barbarous Action? And he ſaid, That my Lord *Onſlow* (the People had ſaid) was the Occaſion of all the Troubles in the Nation; he ſaid, That he could not have any Peace nor Quiet in himſelf in his own Mind; and he was in a great deal of Confuſion. I could not tell what to make of it, that I could not but judge he was beſides himſelf, mad I thought.

Mr. Darby *ſworn*.

My Lord, by Command of my Lord *Onſlow*, I ſeveral Times called this Man to Examination.

Mr. Serj. *Cheſhyre*. My Lord, I ſubmit it to your Lordſhip, Whether this Evidence ought to be permitted in this Caſe, as to this Man's Behaviour ſubſequent to the Fact; the Evidence antecedent to the Fact is very proper; but the ſubſequent, it is very likely, may be counterfeit.

Mr. Juſtice *Tracy*. It muſt be ſubmitted to the Jury, as it appears to them, both before and after.

Mr. *Darby*. My Lord, by Command from my Lord *Onſlow*, I called this Priſoner ſeveral Times, to examine him, to ſee if I could find the true Cauſe why he did this Action. I have been with him by myſelf, with his Friends and his Brothers; but I could never get any tolerable Anſwer. He ſaid, my Lord *Onſlow* had bewitched him, and was a trouble to him.

Soll. for the Priſoner. We have ——

Mr. Juſtice *Tracy*. You have had an Indulgence, the greateſt that ever was given before; but I would not ſtop you.

Soll. My Lord, I humbly ſubmit it.

Mr. Serj. *Cheſhyre*. Will your Lordſhip pleaſe to favour me, by way of Reply, to take Notice of ſomething?

Mr. Juſtice *Tracy*. You hinted ſomething, I think, by a Queſtion. You had one of the Witneſſes aſked, Whether this Man was in a Diſguiſe? Do you believe there is any thing in that? If you aſſure me that Mr. *Hungerford* tells you there is any thing in that Matter, I will hear him.

Mr. *Hungerford.* I can't tell what to ſay; I have looked over the Act of Parliament; I have it in my Hand.

Mr. Juſt. *Tracy.* I aſk you, Whether you believe there is any thing in it?

Mr. *Hungerford.* I believe there is a great deal to be ſaid for it. If this Man was not in Diſguiſe, he is not within the Act of Parliament. As to the Attempt, never certainly was any thing more barbarous to that honourable Perſon. As to the Priſoner, here hath been all the Fairneſs human Nature can expect. I muſt ſay, that as to the Relations, they have had all the Kindneſs and Indulgence. And as to the Matter, that is proper to be mentioned when we have gone through the Evidence on both Sides: I beg leave to do it very ſhortly.

Mr. Juſt. *Tracy.* Two things upon the Common Rule of Conſtruction: in the Repetition of the Words, or——doth not ſhew it to be two Clauſes.

Mr. *Hungerford.* Your Lordſhip obſerves, that the Rule of interpreting all Acts of Parliament is, that of the Preamble, and that of the Title. I believe of late Years in the minuteſt Clauſe in an Act of Parliament there is ſomething of it hinted at in the Title itſelf. Your Lordſhip will obſerve, the Title here is, *An Act of Parliament, &c.* My Lord, it can't be ſaid, there is nothing of that Caſe provided for: If this is a Caſe, the Fact governs; that this Man muſt be in the Clauſe of the Act of Parliament, that this Perſon did maliciouſly ſhoot at, *&c.* It ſeems the firſt Part of the Preamble then, and the being in Diſguiſe, runs through the whole: Theſe Reaſons give me ſome Hope that I ſhall be in the Opinion of the Court.

Again, in relation to his Majeſty's Proclamation, which notifies the ſame Offences as are enumerated in this Act; I have here this very Proclamation; and it doth not notify it otherwiſe, than ſuppoſing being in Diſguiſe; that is a Clauſe which governs the reſt; and the Proclamation is a Rule for the Act of Parliament. The Act of Parliament goes no farther than the Proclamation, as to ſeveral Perſons in Diſguiſe, *&c.* So in the Proclamation there is this Expreſſion, Being in diſguiſed Habits, and Blacks. We reaſon, therefore, that no other Perſon is ſuppoſed to be criminal here. But when one puts a Caſe upon the Act that carries the utmoſt Abſurdity along with it, as ſo it will be if this be allowed, if any Perſon that wilfully or maliciouſly ſhoots at another without being in Diſguiſe, is to commit a Felony within this Act of Parliament. Suppoſing the Militia in their Exerciſe, two People go out to fight with Sword and Piſtol, they both ſhoot at one another; neither is hurt; yet by this Act of Parliament both of them are Felons.

Mr. Juſt. *Tracy.* I don't think that. What do you think of the next Clauſe, Sending a Letter without any Name ſubſcribed thereto, or, *&c.*

Mr. *Hungerford.* There is this Circumſtance attending this Noble Lord's Caſe, that he is alive, and not killed by this Fact: And may he ſtill live, to purſue the noble Purpoſes and Views the Serjeant hath mentioned. My Lord, this is the only thing I have to offer on this Occaſion.

Mr. Juſt. *Tracy.* Becauſe I knew I was to have this Cauſe come before me, I have had a Meeting of my Brethren, to have their Opinion in relation to this Clauſe in the Act of Parliament. Every Judge was of Opinion, It is an intire Clauſe of itſelf, and it had no relation to the former Clauſe of being in Diſguiſe, *&c.* So that there is nothing in this Objection. I was under no manner of Doubt myſelf before, but I was willing to have my Brothers Opinion.

Mr. *Bains.* It would be Preſumption in me to offer any thing further, if it is the Opinion of all the Judges.

Mr. Juſt. *Tracy.* It is indeed; I did intimate it to Mr. *Hungerford.*

Mr. *Hungerford.* I humbly thank your Lordſhip for the Indulgence you have given me, and I wave it.

Mr. Serj. *Cheſhyre.* My Lord, I beg leave to take notice of the Evidence that hath been offered, and the Defence that hath been made on the behalf of the Priſoner; and as the Counſel have waved the Objection on the Indictment; and if they had known the Reſolution of the Judges, it ought not to be renewed: But ſince they have waved it, and the Matter is ſo plain, the Matter now ſtands upon the Evidence; and I think, as it ſtands upon the King's Evidence, there can be nothing plainer, than that the Defendant is guilty of this wilful and malicious Shooting, as it is laid in the Indictment. Gentlemen, now I may ſay the Fact hath been proved to you in the proper way. The Act, the Manner of the Act, and the Behaviour after the Act: He did behave himſelf like a Lunatick; but I muſt ſubmit it to you, whether there is any Appearance in his Behaviour like a diſtracted Man, ſo as to have the Protection of the Law. Gentlemen, that he deſigned this Act, you have Evidence of his coming to the Witneſs to have the biggeſt Shot; he never uſed to call for any but that Sort to kill Rabbits; but now he calls for the biggeſt Sort; he had a different Uſe for it than he uſed to have. The Preparation is very ſuitable to the Deſign; at that time his Behaviour is as uſual; that he calls for the Powder and Shot, and pays for it, in the ſame Proportion as he uſed to do: There did not appear at that time any great Diſorder in his Behaviour: As to the Fact, they that were preſent could find he was ſullen; he went on, he took Aim as well as any body could; and his Behaviour afterwards, his Countenance was pale and livid, which ſhews Guilt, and Thoughts of Remorſe, Anger, and Revenge. As to the Man's Caſe, upon their Evidence, they have made the Point very material, what Condition of Underſtanding and Sanity of Mind this Man had at this time. I muſt agree that a Man that is a Madman, a Lunatick at the Time, he can't in the Law be ſaid to be guilty of Felony. When I have ſo far conſented as this, that the other Side ſhould ſee it is all of a piece with the Uſage the Priſoner hath met with; but I muſt ſubmit it to my Lord's Direction, whether they have given any Proof that the Man was at the Time, or before, a diſordered, Lunatick Man, deprived of his Senſes by the Viſitation of God Almighty. And as to the Rule of judging, it is not, that a Man acts like a Madman, and doth an Act that a Perſon in his right Reaſon ought not to do: No Man that kills another voluntarily, acts like a Man in the Uſe of his Reaſon: No Man that commits a Sin, a wilful Sin, can ſay that he acts with Reaſon; he parts with his Reaſon: But conſider what the Law ſays, That the Man that commits ſuch an Act, is moved by the Inſtigation of the Devil; which is brought in there to ſhew the Horror of the Fact. And if the Man doth act as if the Devil moved him, and that no Man in his Senſes and right Mind would do ſo, you muſt not interpret it, that every Man that acts thus is a Madman; then your Lives and Fortunes are all at Stake, and at the Mercy of a wicked Man. Every wicked Man acts by a malicious, wilful Will. Therefore conſider the Evidence given is of this Kind, and you can't blame them. I don't blame them; here are five of the Relations, two Brothers, two Siſters, and one Son-in-Law; that they ſhould come and do all they can to ſave their Brother from hanging: It will be a Trouble to them, and a Diſgrace. Notwithſtanding, now they ſwear that they have always looked upon him to be Lunatick, and deprived of his Senſes; it is impoſſible to believe them to be in earneſt, and to have acted like honeſt Perſons themſelves; and the like of *Swetman*; and, which brings I think nine or ten of their Witneſſes under this Conſideration, Is it poſſible that theſe People believed and thought what they now ſwear, and they tell you for the Years they have known of him; and becauſe they have looked upon him as a mad, diſtracted Perſon, deprived of the Uſe of his Reaſon? None of them have done any thing to reſtrain this Man, to prevent him from doing any Miſchief; and they tell you the Reaſon is, they feared no Ill of the Man: The Account they have given of him is, that he was an untoward, wicked Boy; and as he grew up to be a Man, he ſtill grew more wicked; ſo that he rather appears to have been a wicked Man, than a Madman: Conſider, therefore, if they are to be believed. He was deſigned to be put Apprentice in *London*; but he ran away: They afterwards put him to a Brewer, or intended it: Did they tell the Perſons they put him to, We would have you take him, he is mad? They would have ſent him into *Yorkſhire*; the Boy would not go: So that he would not ſettle any where. Is that the Sign of a Madman? No, of a naughty, roving Head; and if all your Sons and Servants are mad that act thus, upon my Life you will cut off a great Part of Mankind. Conſider how they uſed him; they have complained of him as a wicked Man, and they would put him in Terror; We will make you do ſo and ſo; and they did ſend him for a Soldier. Have you heard that the Man was diſcharged out of the King's Service, becauſe he was a Madman? No, he ran away: Nobody but what is ſatisfied but that the Man had Capacity, if he had had Diligence, but was an idle, roving Man. The Proviſion made by the Father, and conſtantly paid him by the Son, ſhews him to be in his right Mind: He was a Spendthrift; his Money would not laſt; he ran a Score; which ſhews him a bad Huſband: But is it poſſible, that if the Father had looked upon him as a Madman, he would not have directed ſome Care to be taken of him as ſuch? Would this Brother that pays him twenty Pounds a-Year, and the Man remember the Return of the Period, as faſt as it comes? Did he with-hold it, and ſay, You are not fitted to be truſted? Says he, I want it; therefore let me have it. Is it not proper? Why if you muſt have it, give me your Receipt, here is your Money. Would he not reply, You are not fit to be truſted; we will ſee your Taylor, and pay him; we will ſee your Score, and ſee you are not impoſed on? This is proper, if a Man was void of Reaſon; but as ſoon as the Quarter comes, he comes for his Money; they pay him, and take his Receipt. Therefore conſider, Gentlemen, whether their Actions don't falſify their Oath: They ſay, It is a great Trouble to have ſuch a Brother; we have offered and endeavoured to make all the Satisfaction we can: But we deſire to ſave his Life; and we can't do it by any Act but theſe things which we ſwear, and our Actions will contradict.

It would not become me to run through the Particular of every Witneſs; I ſhall only take Notice, that not one of thoſe, whether Relations, or Perſons acquainted, that they ever applied to any Perſon to have ſome Courſe taken with him, as a Lunatick, or a Madman. You know there are Methods to be uſed in Spring, and Fall, and Summer Time: Have you found that this Perſon hath ever been let Blood? Hath any thing been done towards his Recovery? I don't find there hath. Conſider, Gentlemen, that theſe People that have a Brother, if they would have it believed that he is thus deprived of his Senſes, whether they would have dealt with him as they have done?

They ſent Mr. *Woodward* the Miniſter to him to reclaim him, to reform him; he had been abuſing his Siſter, beating her with a Stick: The Parſon comes to him, admoniſhes him; tells them afterwards, I have ſaid proper Things to him; but he is fitter for a Doctor than for me. Did they themſelves believe this, and would they not have taken the Hint? No.

If in caſe a Man that hath led a vicious Life, been a ſullen, moroſe Man, would curſe by himſelf, and would live by himſelf, if that Man would work himſelf to do an ill Action, this Man is mad, and hath been ſo for twelve Years, though Nobody can ſay he was ſo before. He looks otherwiſe To-day than he did Yeſterday; and very likely he may have been inſtructed by his Solicitor and Friends. I don't impute any thing to any body; but it is a very convenient Art for a vicious Perſon to make uſe of.

He was always left to himſelf, never confined, or any Commiſſion of Lunacy taken out. The Law is now for any Juſtice of Peace to have Power to confine ſuch a Perſon: It is dangerous for all Men; it would be to have the Lives of all Perſons in their Power.

It is very remarkable, that this Man had the Uſe of a Gun, moſt of them ſpeak for a great many Years laſt paſt; he had it in his Father's Time: It ſeems he was a good Markſman; he uſed to ſhoot Rabbits. The Witneſs ſaid he bought three Pounds of Shot at a time: He had no Gun of his own; the Man had the Uſe of the Gun but at the time when the Man himſelf took it with him when he was gone a Malting. Don't you think theſe were wiſe People to let him do ſo, if they thought him a Madman; they would not have truſted theſe Arms for him to have Acceſs to, when they were told that Morning the Man was gone to buy Powder and Ball, if they looked upon him as a frantick Man; ſure they ought to remove thoſe Inſtruments of Miſchief out of his way, ſo that it ſhould not have been in his Power to do what he did do. The Fact is a Queſtion you will take into Conſideration.

My Lord, we ſhall ſhew firſt this Man's Examination, notwithſtanding he was afterwards ſullen; and as he expreſſes it, What doth my Lord ſend his Fools after me?

What is put down in Writing is what we ſhall lay before your Lordſhip, ſubſcribed by his own Name: Notwithſtanding they would have it that he is entirely deprived of Reaſon, your Lordſhip will find ſome Letters writ by himſelf, taking Notice of the Difficulties he was under, that the People took his Cloaths from him; it was eaſier for him to die, rather than live in ſuch unhappy Circumſtances; and deſires to be brought to his Trial: This was during his Confinement, and is very proper for your Conſideration; and for theſe People to come to ſwear he is a Madman, and the Man to look ſo too, is very ſurprizing. We will lay this Matter before you, together with a Witneſs or two, and ſhall ſubmit the whole to your Lordſhip's Direction.

Mr. Serj. *Whitaker*. My Lord, I beg one Word by way of Reply. They have given ſome Account of his Behaviour ſince his Confinement. Gentlemen, I cannot but take Notice of his Behaviour at the Bar, when this Man hath been ſpoke to, whether he hath not behaved himſelf as a Man of Senſe would do that had done an Injury? and when he was aſked what he had to ſay, whether he did not give a rational and ſenſible Anſwer? As I take it, he ſaid he was ſorry for the ill Act he had done.

What can the moſt rational Man, if he hath been in an ill Act, ſay, after he hath done it, but he is ſorry for it? I believe every Man that has done an ill Act, and is ſorry for it, is a rational Man.

Then, my Lord, they give an Account how he behaved himſelf after this Fact; and there hath nothing been proved of any Remorſe, but a ſullen Behaviour. When Mr. *Allen* was with him, his Behaviour was ſullen; that agrees with all Accounts that have been given. Then we ſhall call one Witneſs, who will give you an Account of his Behaviour in the *Marſhalſea*; which is introductory to two or three Papers, which we ſhall give in Evidence; What need my Lord to ſend his Fools after me, *&c.*? For a Man to do this, and then to ſay he is out of his Senſes!

As to what Mr. *Darby* ſays, that the Man was always ſullen when he came to talk with him; if this be a Proof of his Inſanity, it is rather a Proof that he underſtood himſelf very well, and had his Senſes: There is no Reaſon to ſay that this Man was a Madman, and the Law will excuſe him from being a Criminal. This is all I ſhall trouble your Lordſhip with: We will call our Witneſſes, and then ſubmit it to your Lordſhip's Direction.

Mr. Serj. *Comyns*. If your Lordſhip pleaſe to indulge me a very ſhort Word relating to the Conſtruction of this Act of Parliament; there is no Foundation of any Doubt on the Conſtruction of this Act, and the Intent and Deſign of it.

Mr. Juſtice *Tracy*. Another thing more material; It was adjudged ſo in the *King's-Bench*, and ſo entirely given up, that there was not the leaſt Doubt.

Mr. Serj. *Comyns*. My Lord, therefore the thing to be conſidered in the Evidence is, Whether it is a Proof of any Offence within the Words of this Act of Parliament? If this unhappy Attempt had went ſo far as the Noble Lord had died, I believe it is hardly to be imagined that any Evidence given here would have been thought ſufficient Ground to have excuſed the Perſon guilty from the Puniſhment of the Law.

Then in caſe (as now) he recovers of thoſe Wounds, that creates a Sort of Tenderneſs and Compaſſion, where the Conſequence is not altogether ſo direful; and that may ſuppoſe the Perſon to be regarded with more Tenderneſs than in another Caſe: But the Caſe is the ſame in one as in the other Caſe; and therefore he that doth the Act wilfully and maliciouſly, *&c.* is guilty within this Act of Parliament. If a Perſon have no Mind, he can be capable of no malicious Deſign: Therefore we humbly ſubmit that muſt be the Evidence to excuſe the Perſon, That he had no Malice or Deſign in the Attempt made on this Noble Lord: But if upon the Evidence it appears, that he acted with Deſign, with Deliberation, with Sedulity, and a long, fixed, deſigned Malice, and there is no Evidence of Inſanity that can ſhew he had no Malice to excuſe him; then he is guilty within this Act.

Mr. Serj. *Darnell*. My Lord, I am very unwilling to take up any more of your Lordſhip's Time: I apprehend, the Inſanity of the Man muſt be reckoned at the Time he doth the Fact; if he hath Intervals, and kills a Man in thoſe Intervals, he is as much ſubject to the Law as any other Man; therefore taking it all to be true, that the Man is ſometimes out of his Senſes, it will then fall under this Conſideration, Whether at the Time that he did this Fact, it was not in his Intervals? And if ſo, he muſt ſuffer the Law. My Lord, the Evidence hath made it manifeſt, that he was in a Capacity of acting that Morning, employed to buy Shot, employed to do a Work to get Money; he doth buy Shot, diſtinguiſhes the Sort of Shot, a bigger Sort than ordinary. In the Morning of that Day, the People thought him capable to be entruſted with Money, and to be employed, *&c.* ſure the People that thus employed and entruſted him, looked upon him that Day to be in his right Underſtanding: Taking that ſingly, if at that Time he was really in his Senſes, he is ſubject to the Law. My Lord, it is very odd to hear ſo many Relations come into Court, and confeſs themſelves guilty of the wickedeſt Practice; they ſay, they apprehended he would ſet the Houſe on Fire, do Miſchief, and yet ſuffered him to go abroad. Some ſay, they did not fear him, but they looked upon him as a Madman; therefore not to ſecure him, it is Matter of Cenſure to all thoſe Relations, to look upon him to be mad, and yet take no Care to confine him, or to cure him. I don't find one ſingle Inſtance to aſſiſt him with any Care for a Cure; therefore we hope, on the Repreſentation of the Relations, this Man is not ſuch a Perſon as to be excuſed from the Law. I think it is very much to be weighed in the Breaſt of the Jury, whether this Man is not a Warning to every wicked Perſon, and a Caution to Relations, that they ſhould have Regard to ſuch a Perſon. It is a very ſorry Account to be given, when a near Relation is under theſe Circumſtances, to ſay, It is our Relation hath done it, pray don't convict him, though we have let him go abroad in the World, though we knew he was out of his Senſes: This ſtrikes deep in their own Conduct, whatever be the Event of this Trial. But I think there is ſufficient Proof, that this Man ſhould be brought *in* in the ſame Manner as every Body elſe is, that is in his Senſes.

Mr. *Marſh*. This Trial hath held too long for me to add any thing to take up more of your Lordſhip's Time; I only beg Leave to take Notice, that I think it is very extraordinary in theſe Relations, that they ſhould not take Care, when they apprehended him to be mad, to ſecure him: I don't apprehend that he was at a Diſtance from any of them; but as to two of the Siſters, that lived in the Town where this Man every Day came, in the Neighbourhood of *Guildford*, they ſay, they lived there three Years, and give ſeveral Inſtances of his Inſanity: It don't appear they ever ſent any Perſon to him to let him Blood, or to give him any Advice, or Phyſick; that doth not only make them blame-worthy, but, I apprehend, makes the Evidence they have given of his Inſanity incredible, as coming from them, becauſe it is hardly credible he ſhould be ſo, and they not take that Care of him as they ought. They own that they knew he uſed to go out a ſhooting, and had deſperate Weapons; they never ſent any Body that went after him. Some of the Witneſſes go to repreſent him as incapable of any ſenſible Action, for a great many Years, and therefore he is ſet at the Bar in a Figure different from the reſt of Mankind: But even here, when they talk of the Poſture of his carrying his Gun, he ſays upon that, he hath often had his Gun go off in his Hand, but never had the Accident before. This Man they are ſetting to the Jury as a Man of Pity, of Compaſſion, capable of Compaſſion. Another Time he ſaid, his Shot was Rabbit-ſhot. The Behaviour of him, notwithſtanding he is ſet, and put in that Form, will not have that Influence upon, but that if you are ſatisfied he hath done the Fact, you will find him guilty.

Mr. Serj. *Cheſhyre*. I beg your Lordſhip's Leave to call a Witneſs or two: There is one remarkable Paſſage your Lordſhip will hear from the Witneſs: This was deſigned as a Recognition of this Fact, with reſpect to my Lord *Onſlow*, when it was finiſhed, they had thrown the Ink upon it, inſtead of the Sand; ſays he, It is an ugly Accident, it muſt be writ over again, you had better ſtay till it be writ over again. I only offered it as a Paper ſigned with theſe Circumſtances, to ſhow his Behaviour.

Barwell Smith *ſworn*.

Mr. Serj. *Cheſhyre*. Did you ſee him ſign that Paper?

Mr. *Smith*. Yes, I ſee him ſign it.

Mr. Serj. *Cheſhyre*. Who writ it?—Mr. *Smith*. I writ it.

Mr. Serj. *Cheſhyre*. I'll aſk you, did he dictate to you, as you writ it?

Mr. *Smith*. I took it from his Mouth, as nearly as I could.

Mr. Serj. *Cheſhyre*. What is the Import of it?

Mr. *Smith*. It is a State of the Caſe of what he had done to my Lord *Onſlow*, and how he came to do it.

Mr. Serj. *Cheſhyre*. You took it fairly from his Mouth?

Mr. *Smith*. I did; it was read to him twice, and he read it afterwards.

Mr. Serj. *Cheſhyre*. Did he ſign it?—Mr. *Smith*. Yes.

Mr. Serj. *Cheſhyre*. You obſerve ſome Ink fallen upon it?

Mr. *Smith*. After he had ſigned it, I went to put ſome Sand upon it, and in Miſtake, I took up the Ink, and turned it up inſtead of the Sand.

Mr. Serj. *Cheſhyre*. What did he ſay?

Mr. *Smith*. As ſoon as I had done it, he ſaid, Why you have blotted it ſo that it cannot be read, it muſt be writ over again: No, ſays I, I believe not, if you think it will ſignify; he then ſaid, Pray do all you can in your Power, uſe your Endeavour with my Lord *Onſlow*, to have his Fetters taken off, for they were very grievous to him. There was one of the Keepers in the Room, and I deſired him to take Notice, it was his own voluntary Deed.

Mr. Serj. *Cheſhyre*. Look upon thoſe Papers.

Mr. *Smith*. He writ that Letter, and I gave it to my Lord *Onſlow*: I ſat by him, and ſee him write.

Mr. Serj. *Cheſhyre*. Look upon that other Letter.

Mr. *Smith*. I did not ſee him write this.

Mr. Serj. *Cheſhyre*. You take it to be his Hand-writing?

Mr. *Smith*. Yes, I take it to be his Hand-writing.

(The blotted Paper read.)

Clerk reads. *Edward Arnold*, now in the *Marſhalſea*, &c.

Mr. Juſtice *Tracy*. Did he put his Name to it himſelf?

Mr. *Smith*. Yes, he did, he deſired he might: It was read over to him, and he ſaid, I muſt ſign it; yes, if you will, but do not ſign it, if there is any thing in it that is not right.

(The Letter produced, dated January 25, 1723.*)*

Mr. *Smith*. This I ſee him write; he writ it himſelf, without my ſaying one Word to him.

Clerk reads.——To the Reverend the Lord *Onſlow*, &c.

Clerk reads the other Letter. My Prayer to your Honour is, that you would ſend or write Word, which way, *&c.*

Mr. Coe *ſworn*.

Mr. Serj. *Cheſhyre*. Sir, will you give my Lord and the Jury an Account, whether you was with him while he was a Priſoner at any Time during his Confinement? And what paſſed between you? What Diſcourſe? and how you apprehended him to be by his Behaviour? Whether he had the Uſe of his Underſtanding, for a Man under ſuch a Load of Guilt?

Mr. *Coe*. I went, the Day he committed the Fact, to ſee him, at the Houſe of Correction: I had been up to ſee my Lord *Onſlow*, and then I went to ſee him.

Mr. Juſtice *Tracy*. What Time was it?

Mr. *Coe*. About Ten or Eleven o'Clock: Then, my Lord, he ſat quite double, and did not ſpeak a Word. I went the next Day, and he was brought into a Room; he ſeemed under a Confuſion, but not Lunatick; under a Horror of Guilt, but no Remorſe; ſays I, What could induce you to do this Fact? Says he, My Lord *Onſlow* is the Plague, the Occaſion of all the Plagues and Troubles in the Country: Who told you ſo? A hundred People ſay ſo, the very Boys in the Street cry out of my Lord *Onſlow*. I aſked him Queſtions ſeveral Times, but it was very difficult to get Things out of him; he ſpake low to himſelf, and you aſk ſeveral Times, before you get an Anſwer, and when he did anſwer, it

it was always rational. He would rail at my Lord *Onſlow*, and that he was the Occaſion of all our Plagues and Troubles, and a Man of evil Devices. Says I, Are you not afraid to ſuffer Death? Says he, It is better to die, than to live miſerably. I went to ſee him the next Day: I aſk'd him, Did you intend to kill my Lord *Onſlow*? He had a dreaming way of ſpeaking; Yes, to be ſure. I ſaid, Where did you intend to hit my Lord? Says he, When I ſhoot at a Rabbit, I always aim at his Head.

Mr. Serj. *Cheſhyre*. Did he deſire you to ſay any thing to my Lord?

Mr. *Coe*. I went afterwards to ſee him, when he was in the *Marſhalſea*; he was very ill; I aſk'd for him, and the Man in the Bar brought him to me: I aſk'd him if he could drink ſome White-wine; ſays he, The White-wine here is too ſharp for my Stomach; then I call'd for ſome Sack, and he had it. I aſk'd him how he did, and he held down his Head, and ſaid, In a bad Condition. I ſaid to his Keeper, I believ'd he would die, he ſhould have ſome Care taken of him; his Keeper ſaid, It was common. The Priſoner ſaid, Theſe Irons are very heavy and troubleſome, and ſat down in a Chair, very ill. He deſired me to ſpeak to my Lord, and tell him how he was iron'd, and they uſed him. I did ſpeak to my Lord, and afterwards came to ſee him again, which was on the Twenty-ninth of *October*, my Lord Mayor's Day: I remember the Day, becauſe I ſee my Lord Mayor, and the Companies, going to *Weſtminſter* by Water. I told him really, It is a hard Caſe, that a Man of ſuch a good Family ſhould ſuffer ſo, you ought to declare all that you know; it is an odd Thing to hate a Man *extempore*; if you know any body that ſet you upon this, you ought to declare who it is; but have a Care you don't accuſe the Innocent: But he never did name any body to me, but he told me, I have ſign'd a Paper, what is in that Paper is true: I preſs'd him to tell me the Truth, but he ſaid at laſt, If my Lord *Onſlow* will come here himſelf, let him, but let him ſend no more of his Fools after me.

Mr. Serj. *Cheſhyre*. Have you any Reaſon to believe that he wanted the Uſe of his Underſtanding?

Mr. *Coe*. No; I went to School with him; we were in the ſame Claſs together: He was a ſtrange, ſullen Boy, ſuch a Boy I never ſaw the like of him before, which made me, when I left School, that I never ſpoke to him ſince, till about two Years ago; and as I was going up the Hill, I ſee him have a Perch by the Tail; I aſk'd him, what he would have for it, he aſk'd a Shilling for it; I told him, I would give him Sixpence, and a Pint of Ale: No, ſays he, it is honeſtly worth a Shilling, and a Shilling I will have.

Mr. Serj. *Cheſhyre*. How long ago is this?

Mr. *Coe*. *Chriſtmas* was two Years.

Mr. Serj. *Cheſhyre*. You form'd a Notion of him from a School-boy, that he was a malicious, ſurly Fellow?

Mr. *Coe*. I did: I really thought, ſuch a Temper as he ſet out with, muſt produce ſuch a Man as he appears to be.

Mr. Juſtice *Tracy*. He did behave himſelf laſt Night, when he pleaded, calmly, and as much in his Senſes as any body.

Gentlemen of the Jury,

This *Edward Arnold*, this unhappy Perſon, is indicted for a great Offence: The Law, on which the Indictment is grounded, is an Act of Parliament that paſſed the laſt Seſſion of Parliament, and is entitled, *An Act*, &c. which is conformable to the antient Law of this Kingdom, but that Law hath been diſcontinued; if any Man did aſſault another, though Death did not enſue, it was made Felony, by the ancient Law of the Kingdom; but the Law is ſince altered, and it was not ſo, till this Act of Parliament was made. This is to ſhow you, that though it is a new Law, it is juſt, and he that hath

not if the Reaſon of Law: All Laws are of equal Force, till repeal'd, have the ſame Power, but when they are repeal'd they are no further to be conſidered. There can't be a more horrid and wicked Thing intended in the Deſign of it, than maliciouſly to ſhoot a Man.

To prove this Indictment, they have called a great many Witneſſes: The firſt Witneſs they call is Mr. *Flutter*. This happen'd to be done on the Twentieth of *Auguſt* laſt, in the Pariſh of St. *Nicholas*, near *Katharine-Hill*, as he was coming from Hunting with my Lord *Onſlow*. When they came into a narrow Lane, near *Katharine-Hill*, he ſaw this Man coming towards them, to meet them, with his Gun in his Hand, and he obſerved his Gun was cock'd, and he ſaid he look'd upon him, and his Countenance was changed, and he look'd pale, like a Man that had ſome great Concern upon him; he obſerved and ask'd him the Reaſon of his carrying his Gun in that Manner; but he made no Anſwer, went on, curſing as he went, and when he paſs'd them, he immediately turn'd ſhort, ſhot my Lord *Onſlow*, knock'd him off his Horſe, and he fell from his Horſe upon his Face. This is the Deſcription he gives of the Fact. He is then ask'd, Whether ever the Priſoner was reputed a Madman, or diſtracted, or lunatick? For you are to underſtand, that *that* is the main Point in this Caſe, and what the Priſoner hath for his Defence: And the Witneſs ſays, he never heard of his being mad, or his being reputed to be mad, or out of his Senſes, notwithſtanding he lives at *Guildford*, and this Priſoner lives very near him. At the ſame Time he ſays, that he knew very little of him; ſo that what he ſays, as to that, is not of great Weight. I told the Priſoner, as any Witneſs came to be examin'd, if he would have them ask'd any Queſtions, I would ask them for him: Inſtead of asking the Witneſs a Queſtion, he ſaid, He paſs'd that Way every Day, and he was ſorry for what was done.

Mr. *Parſons* is the next Witneſs; he ſays he was very near my Lord *Onſlow* when this Accident happen'd. He gives you much the ſame Account as the other Witneſs did, only adds, that he preſented his Piece, took Aim, and ſhot at my Lord *Onſlow*: The Event of the ſhooting, he deſcribes in the ſame Manner as the other Witneſs doth; ſo upon that, the Man went on, and he follow'd him; the Witneſs follow'd him, and told him, he had kill'd my Lord *Onſlow*, and he would be hang'd for it; What, ſays he, I ſhall not be hang'd to Day, and he would have charged again; with what Intent you are to judge of upon the Circumſtances of the Caſe. The Priſoner was brought back to my Lord, and on Sight of him, my Lord ſaid, You Villain, you have kill'd me: The Witneſs thought he had a Deſign to fall on my Lord *Onſlow* again, that is uncertain; his Gun was taken from him, but he apprehended ſomething of that kind, and that he intended ſome further Miſchief againſt my Lord *Onſlow*. He ſaid, When he ſhot, he aim'd at my Lord's Head, but the Wound was only in his Shoulder: And the Priſoner being ask'd, if he had any Queſtions to ask this Witneſs, ſaid, He did not know what to ſay. This Gentleman ſays, he never took the Priſoner to be a Madman, but a ſullen, moroſe Fellow, and he uſed to go a Shooting, and a Fiſhing.

Another Witneſs is Mr. *Fawks*; he ſays, he was with my Lord *Onſlow*, and ſaw the Priſoner coming up, and he told Mr. *Parſons*, that he believed he had ſome Deſign againſt him; for, not long before, he had taken away his Horſe, in the manner he deſcribes. It is not material to run through all the Particulars, and he did not know, but he had a Deſign upon him; he look'd very ſtern, and after he had paſs'd my Lord, he immediately turn'd round, and ſhot, as you have heard. He was ask'd, How he could ſee at that Diſtance, when he was behind my Lord, in the ſame Track? ſo that my Lord muſt be between him and the Priſoner. He ſaid, my Lord and he were in the Horſe Track, and the Priſoner was in the Foot Way, which was a different Track. This Witneſs is ask'd, Whether he took him for a Madman, or a Lunatick? Gentlemen, he ſays likewiſe the ſame as the other Witneſs, That he always was a ſurly, a moroſe Fellow, and did not care to talk, but he did not take him to be a Madman: The Priſoner then ſaid, He had often had his Gun go off in his Hand, but never had ſuch an Accident before. When this Witneſs ask'd the Priſoner, Why he did not ſhoot him, becauſe he had talk'd to him about running away with his Horſe, rather than my Lord *Onſlow*? He ſaid, You are an innocent Man.

The next Witneſs is one Mrs. *Smith*: She ſays, he came to her Shop that Morning as my Lord *Onſlow* was ſhot, to buy ſome Powder and Shot; and when her Daughter came and asked him what Size Shot he would have, he ſaid, The bigeſt they had; but the Daughter came and told her they had none of that in the Drawer: then ſhe bid her give the ſecond Size, No. 2. which ſhe did, and he paid her for it. This Witneſs tells you, he had been a very good Cuſtomer; and that the Shot he uſually had was another Sort; and he never ask'd for, or had, this big Sort before. That ſhews, Gentlemen, and from whence they would infer, and it is fit for you to conſider, whether he had not ſome more than ordinary Deſign, greater than what was uſual when he went to kill Rabbits; which is a thing much relied upon in the Courſe of this Trial. When he is asked If he will ask this Witneſs any Queſtion? He, ſays he hath ſeveral times bought Shot of her; and ſhe is asked whether ſhe took him for a Madman? She ſays ſhe always took him to be as ſenſible, by his Dealings with her upon the Account of what he bought, as any body; and that he never had any of the biggeſt Shot before: She tells you he paid for it as he uſed to do. And this Priſoner on this Occaſion owns, that he had often bought of her Powder and Shot frequently.

The next Witneſs is *William Smith*: He ſays he met the Priſoner, and the Priſoner asked him if my Lord *Onſlow* went a Fox-Hunting. This Witneſs was ask'd whether he looked upon him to be diſtracted? He ſaid, No, he never did. Sometimes he went out a fiſhing with him; ſometimes he would talk very well, and ſometimes not give him a Word; that he was a moroſe, ſullen Man: He ſays he was a great Fiſher, but his Tackle was ſtrong, a coarſe gaming Sort of Tackle; he was no great Artiſt at it; and that he often ſhot Rabbits.

The next Witneſs is *John Sturt*: He ſays he ſaw the Priſoner the ſame Day, and he asked him if my Lord *Onſlow*'s Hounds were out a hunting? He told him he did not know; he fell a curſing and a damning my Lord *Onſlow*, and ſaid, If he ſaw him he would ſhoot him. This was about two Stones Throw from the Place where this Accident happened. He ſaid he hath ſeveral times ſeen him a ſhooting with a Gun, very often. He was asked whether he took him to be a Madman? He ſaid he never talked much Senſe, and he would often rail, and curſe, and ſwear to himſelf: Then the Priſoner ſaid himſelf he never ſwore; the Priſoner obſerved it upon that Occaſion, that he never ſwore; and the Witneſs ſays that he took him that Morning to be in Drink; and when he was asked, Whether he took him to be diſtracted? he ſaid, He did not take him to be ſober, he was not right in his Senſes, he would talk and ſwear ſo much to himſelf.

The next Witneſs is *John White*: He ſays he ſaw the Priſoner that Day; he ſays he heard his Gun go off, and he came afterwards into a Publick Houſe where he was, and the Witneſs asked the Priſoner if he had ſhot a Rabbit? He told him he had ſhot nothing, it was only to diſcharge his Gun: From whence they make an Obſervation for the King, Why ſhould he diſcharge his Gun, unleſs it was that he might be more ſure of its going off when he charged it again, for it might be wet and damp by lying by? That ſhews his Reaſon and his Judgment, if he did this; it ſhews it was not the Effect of ſudden Rage and Diſtraction, but a premeditated thing, laid with Deſign and Artifice, and that he had the Uſe of his Senſes and his Reaſon: If that was the Cauſe of his diſcharging his Gun, though no Reaſon is given for it; And what Reaſon could it be? for they do not offer any Reaſon, unleſs it was to ſecure it, that the Gun ſhould go off; for it having remained charged ſome time before, it may be moiſt, and ſo would not go off: Whether he diſcharged it for that Reaſon, I muſt leave that to you; he only ſaid he had diſcharged it. This Witneſs ſays, he was at that time in a very ſerene Temper, and he never took him to be mad or diſtracted: He was cunning in all his Dealings with him. This Witneſs was a Taylor, and had Dealings with him as a Taylor for ſome time; he ſaid he paid him very honeſtly and well, but he was always very hard: He ſays when he was once with the Priſoner before this Accident, and the Priſoner asked him what Sort of a Man my Lord *Onſlow* was, and what my Lady *Onſlow* was; the Witneſs gave them both a good Character, and ſpeaking of my Lady that ſhe was a good Woman; ſays the Priſoner, Why don't ſhe cut my Lord *Onſlow*'s Throat? He ſays he uſed to ſhoot Rabbits: and afterwards he went to ſee him when he was in the Houſe of Correction, and he ask'd him what the People ſaid; and he ſaid the Vogue of the People at *Guildford* was,

that he would be hanged; and his Friends were much grieved and concerned for him: The Priſoner ſaid he deſired Nobody ſhould be concerned for him. This Witneſs once told him my Lord was dead; ſays he, If he is dead, I can't help it.

Gentlemen, the next Witneſs is Mr. *Allen:* And he tells you, that ſoon after this Fact was done, the ſame Day he went to him to the Houſe of Correction, and examined him; and that he found him in a very ſullen Mood, and he could get nothing out of him a long Time: At laſt with ſome Perſuaſion he expreſſed himſelf thus: I don't trouble my Lord *Onſlow*, pray don't trouble me. He went again the next Day, and then he aſked him ſeveral Queſtions; but he ran on with Vehemence againſt my Lord *Onſlow*, as the Author of all the Tumults, Diſturbances, and Confuſions, and wicked Devices that had happened in the Country. This Witneſs being aſked, whether he had declared that he was mad after this Examination? He ſaid in Anſwer to that, that he met with the Priſoner's two Siſters, who aſk'd him of this Matter, they aſk'd him if he did not believe their Brother was mad? He ſaid, it was the beſt thing they could ſay for him, to ſay that he was mad; he ſaid the Priſoner behav'd himſelf very oddly, but poſitively he never declared that he was mad; he told him he was willing to die, and why did they not kill him? That talking to him further of this Matter, he aſked him if he had any long deliberate Intention to kill my Lord *Onſlow*, and if he had communicated his Deſign to any Perſons, or any Perſons had encouraged him in it? He named two Perſons, but they were not named by the Witneſs, becauſe it might turn to their Prejudice one way or other; but it was aſked, Whether or no they were my Lord *Onſlow*'s Friends or his Enemies? He ſaid, on his then further endeavouring to find out the bottom of the Matter, on the Priſoner's declaring that ſuch Perſons had ſet him on work; the Priſoner then intending to ſink back, ſaid, he would not bring his Friends into Trouble. Theſe are the Diſcourſes of a prudent Man, a Man that hath the full Uſe of his Underſtanding: No Man talks in a more reaſonable way than this. I told you the two Perſons were not named on Debate; it was determined the Witneſs ſhould not name who thoſe two Perſons were, but ſhould declare whether they were Enemies or Friends to my Lord *Onſlow*; he declared they were my Lord *Onſlow*'s bitter Enemies. This Witneſs gave you a long Account of this Matter; he ſaid he had reduced it into Writing; which was the Reaſon that he ſo well remembered it; and that made him ſo very particular.

Upon this the Counſel for the King ſtopped, and left the Matter here. Then the Priſoner being aſked what he had to ſay for himſelf, he was a good while before he ſpoke; but what he ſaid was to this Purpoſe; If he was guilty of any Fault, he was ſorry for it; but he did not know what to ſay. This is the Subſtance of what he ſaid.

Then, Gentlemen, they have been indulged with all the Favour as can be; and to do Right to this Proſecution, and the Counſel for the King, becauſe there hath been an Affidavit ſworn, that he is not perfect in his Senſes, they gave Liberty to another Perſon to call the Witneſſes, and put what Queſtions they pleaſed; they have had all the Favour and Indulgence imaginable; therefore it is fit to be taken Notice of, for the Honour of this Proſecution, that every thing hath appeared fair to the Country, and they may judge of it.

They have produced a great many Witneſſes: The firſt is *Nathaniel Arnold*; he ſpeaks it poſitively, and ſays, he knows him to be a Madman; his Father had tried to put him Apprentice to ſeveral Places, but he would not ſtay: Once he came to ſee the Witneſs at *London*, but he would not ſtay; then he ſent him a Ship-board, in order to go into *Yorkſhire*; but he would not ſtay: Afterwards he looked upon him as an unaccountable Man; and his Father dying he left a reaſonable Subſiſtence to keep him from ſtarving, Twenty Pounds a-Year; and that was paid him quarterly by this Witneſs: Sometimes he was ſo diſtaacted that he would lay out all Night upon Hay-Ricks, though he might have come home and laid on a good Bed; that the Priſoner lives by himſelf, but hath no manner of Convenience about him: This Man expreſſes it in general, that he believes him to be a Madman, and always acted like a Madman; though he ſays he was not ſo much a Madman as to be chained and tied up: He ſays he never had a Letter from him; but he could write, and he would preſs him often for Money as Quarter-Day came.

The next Witneſs is another Brother, *William Arnold:* He ſays his Brother was always diſtracted, and not in his Senſes, though not always in ſo ſad Condition as at other times; he would curſe and ſwear very frequently: In his Father's Time he would curſe him, and call him wicked and abominable Names, and then burſt out into a Laughter.

He ſays his Father left him Twenty Pounds a-Year; he was always ready for his Quarterage, for he would run a Score, and the Peple would dunn him. He ſays, the tenth of *July* the Priſoner came to his Houſe in *London*, and told him he could never be eaſy, for my Lord *Onſlow* had bewitched him; and he looked wilder than he uſed to look; and he gave him Money to go home,

And in his Father's Time he would abuſe his Father; who, at the Requeſt and Advice of his Neighbours, applied to the late Lord *Onſlow*, who had him ſent for a Marine to the *Baltick*; but he did not ſtay, but came home again: And when he miſbehaved himſelf, People would tell him, My Lord *Onſlow* would ſend him again for a Soldier. The Witneſs is aſked, if he did not hear that he ever threatened the Life of my Lord *Onſlow*, or ſay any thing he would do; he tells you he doth not know or remember he did.

Another Witneſs is *Mary Arnold*, the Wife of *Nathaniel Arnold:* She ſays, ſhe hath ſeen him often in great Diſorders, and hath ſeen him diſtracted; ſhe hath known him ſeveral Years, and never heard him ſpeak ſix Words of Senſe together. He ſtruck his Siſter ſo dangerouſly with a ſtick he threw at her, that ſhe feared ſhe would have loſt the Sight of one of her Eyes; ſhe reproved him, and he laughed at her for it; and at Table he did not ſit or feed himſelf as other People did: She never heard he hurt any body. About a Month before this Accident happened to my Lord *Onſlow*, the Priſoner came to her Houſe in a great Confuſion, and told her he was bewitched by my Lord *Onſlow*; and he ſaid the Imps danced in his Room, and he could not lie in his Bed for them; and that the Devil did tempt him, and the Imps ſtood by his Bed-ſide; that to the beſt of her Knowledge ſhe never heard him ſay any thing about my Lord *Onſlow* before, or of the Deſign he had againſt him.

The next Witneſs is *Eleanor Arnold*, his Siſter: She ſays, the Priſoner hath been diſtracted for more than ſeven Years ago, and in all that Time was not capable of forming any Deſign: She ſays, that the twentieth of laſt *Auguſt* he came to the Pariſh-Church, and behaved himſelf in ſuch a Manner that they all talked of him as if he was a diſtracted Perſon; and ſhe contradicts what Mr. *Allen* ſaid, and doth ſay that Mr. *Allen* told her, after the Examination, which Mr. *Allen* hath mentioned to you, that he was a diſtracted Perſon at that Time, and that was his Opinion; that he would for Hours together talk Nonſenſe, and curſe and ſwear, and he would give no Reaſon for it: She ſaid he would ſometimes make a great Fire in the Parlour when no Perſon hath been there, as if he would fire the Houſe; ſhe hath known him throw burning Coals on his Father's Plate when he was alive, and he would fall often into ſudden Fits of Laughter: Sometimes ſhe was afraid he would do Miſchief to himſelf; yet no Care is taken of him.

Another Siſter tells you, ſhe thought him diſtracted and mad, though not ſo much as of late; and gives you ſeveral Inſtances: She ſays, his ſwearing and curſing to himſelf, and his ſudden Fits of Laughter, and his talking to inhuman Creatures, was in a different Manner from what other People did; ſhe mentions the ſame thing about his going to the Church, and the Opinion and Obſervation the People made on his Behaviour, that they could not imagine but he was mad. This Siſter ſays, that Mr. *Allen* did tell her he was diſtracted and mad; and ſhe owns ſhe was the Perſon that was ſtruck by this Man; and ſhe ſays ſhe never gave him any Provocation for doing it.

Another Witneſs in *Gittings:* She tells you ſhe always took him for a Lunatick, and this for nine Years paſt: She ſays as the other Witneſſes ſay, that he would talk to himſelf, and ſwear and curſe without any Provocation: She ſpeaks as to laſt *March*, and that was the firſt time, and not before; ſhe ſays that he ſeemed very much diſturbed, and declared, and often complained, that he was plagued by my Lord *Onſlow* and his Imps: And in *May* laſt he had hurt his Arms, and ſhe went to one Mr. *Howard*, who was a Surgeon, who applied a Plaiſter to his Arm; but the next Morning, when the Man came to dreſs it, he had thrown the Plaiſter and Things about the Room, and ſaid to the Man that he would make Iſſues in his Arm. Then he complained that Mr. *Waite*'s Rooks diſturbed him; then after he had ceaſed to talk of this, he ſoon began again to talk of my Lord *Onſlow*'s plaguing him Day and Night: She ſays ſhe ſaw the Priſoner in Gaol the twenty-third of laſt Month in the *Marſhalſea*, and that he was in great Diſorder; and then ſhe aſked him how he came to do ſuch a wicked Thing? And that he gave her little or no Anſwer that ſhe could make any thing of; and ſhe aſked him if any body had ſet him to do it, and who? and he told her it was one *Swetman* and *Thomas Farmer*, two little Boys, one about ten, the other about eleven Years old; and ſhe ſays he told her there were great Plagues in the World, and there would be great Mourning and Lamentation. Theſe are Inſtances ſhe gives of his Madneſs.

The next Witneſs is *Mary Martin*; and ſhe ſays, that ſhe heard him declare that my Lord *Onſlow* was in his Belly; and I think ſhe ſays they appointed a Time to go to my Lord *Onſlow*, which was the next Morning; and that he opened his Breaſt, and curſed and ſwore, and ſaid, My Lord *Onſlow* was in his Boſom, and he could neither eat, nor drink, nor ſleep, nor be at Reſt for him.

The next Witneſs, *Swetman*, tells you that the Priſoner was a crazy Fellow, and not always in his Senſes; that he lodged at his Houſe fifteen Months before this Accident happened, therefore could ſpeak more particularly as to him.

The Witneſs tells you that he uſed to lend him his Gun, but he did not lend it him at this Time; but he owns that the Priſoner had the Gun, though without his Leave; he ſays he was generally worſe in Spring and Fall; he tells you that the Priſoner told him, that my Lord *Onſlow* had brought a Hamper of Wine one Night to his Houſe, and that next Morning he found all the Bottles empty; and he ſaid that my Lord *Onſlow* had been there revelling, and making ſo great a Noiſe that he could not be at Reſt for him: This was half a Year before this Accident happened. He ſays that he had the Gun to go and ſhoot Mr. *Waite*'s Conies, for which he was to have Sixpence a-piece; and the Lane where my Lord *Onſlow* was ſhot, leads to the Turnep-Field where Mr. *Waite*'s Conies were; which is made ſome Uſe of in the Courſe of this Trial: He ſays he hath heard him ſay formerly he would ſhoot my Lord *Onſlow* at the Horſe-Race.

The next Witneſs is *John Dedman*, who ſays that the Priſoner is a Madman; gives an Account of his complaining of my Lord *Onſlow*; ſays he had a Houſe, but he had no Beds or Chairs in it; he ſays, about five or ſix Years ago he beat his Siſters and Maids, and he hath been forced to go and make Peace among them.

The next Witneſs is one *Richard Wheatly*; and he ſays he was his Barber; he ſays he hath ſhaved the Priſoner theſe two Years, and ſometimes he was afraid to ſhave him, he would be ſwearing all the Time; and once he ſaid to the Witneſs, Damn you, cut my Throat.

The next is *John Tydie:* He ſays he is a very crazy Sort of a Fellow: He is asked what he means by a crazy Sort of a Fellow; he ſays he had ſeveral fooliſh Expreſſions; he hath heard him ſay the Bolleroys and the Plagues plagued him ſo, that he could not reſt: He heard him ſay the ſame as to the Hamper of Wine at *Swetman*'s; therefore I will not repeat it.

The next Witneſs, *Thomas Poulter*, ſays, he always took him to be out of his Mind; once he threatened to kill him, about a Fortnight before this Accident happened to him, in a Field where he was working, ſwearing and curſing; and at laſt he ſaid, Damn *Tom Onſlow*, and ſaid he had bewitched him, and he would go to the King, and know the Reaſon why my Lord *Onſlow* troubled him ſo.

The

The next is *Mary Morris:* She ſays ſhe always thought him to be mad by his mad Actions; ſhe ſays he would curſe and ſwear; and that the *Saturday* before he ſhot my Lord *Onſlow* he came to their Houſe, and talked ſo, and looked ſo wildly, that ſhe was frightened: When he was in Priſon ſhe carried him Victuals, and the Goaler bid her bring no Bones, nor Knife, for they were afraid he would do himſelf a Miſchief; then he asked a Boy that was with her, whether they were plagued with the Bollies and Buggs, as formerly?

The next is *Stephen Fachin:* He ſays they found him in *Looſley* Lodge, lying only upon the Wood, in a Morning, about two Years ſince, in the Spring of the Year, about Seven o'Clock in the Morning.

The next Witneſs is *Robert Dandy*; and he ſays he always thought him a crazy Man, ſeldom in his Senſes; he ſays he hath threatened to beat his Father.

The next is *Mary Swetman*, the Wife of —— *Swetman*, where he lodged, as hath been obſerved, for a matter of fifteen Months, and at that Time, ſhe ſays, ſhe thought him a Madman, not in his right Senſes. Once they could not prevail upon him to come into the Houſe, becauſe he had ſaid, there were Rogues hid, and he did lie out that Night. She gives you the ſame Story, about the Hamper of Wine; and that the Priſoner talked to her Huſband, that there was too great Familiarity between her and my Lord *Onſlow*. Sometimes he would pretend to read in the Bible: Once he read in the Bible two or three Chapters very well. Another Time, being worſe, ſhe gave him the Bible, and asked him to read; he pretended to read, but repeated moſt ſtrange Stuff as ever was in the World: He then talked of my Lord *Onſlow*'s plaguing him. She tells you, that he did not lie at home that Night before this Accident happened, but was home ſoon in the Morning; and he went out, and came back again, and then the Boy told him, that Mr. *Waite* wanted to have his Rabbits killed, and the Boy and he was to go Halves, and the Mother did lend him a Shilling to buy Powder and Shot for that Purpoſe. Now it ſeems, the Place where Mr. *Waite*'s Conies are, is near the Place where this Accident happened, ſo that they would have you think, that this Powder and Shot, which he bought, was to kill theſe Rabbits, and that he was going that Way in order to it. You will remember what was proved to you about the Shot, that it was not the uſual Shot that he bought, but a bigger Sort. He went up the Lane, the Witneſs tells you, towards the Place where *Waite*'s Conies were: Soon after that, ſhe heard a Gun go off, and ſhe thought he had been killing ſome of the Rabbits; but ſoon after, ſhe ſaw ſeveral Horſes, and Nobody upon them, and ſome Gentlemen, and they came and asked her for ſome Water and Brandy, to relieve my Lord *Onſlow* under his Misfortune; and then ſhe came to hear, that the Gun that went off, inſtead of killing Rabbits, went off againſt my Lord *Onſlow*. She ſays, ſhe hath heard him ſay, he would kill my Lord *Onſlow:* She ſays, he hath ſometimes threatened to kill her, but yet did not do her any Harm. They think this Evidence ſo very material, that they have produced two Witneſſes, that tell you, that they heard this *Mary Swetman* ſay the very ſame Things to them, as ſhe hath now given in Evidence.

The next is Mr. *Copeland*; he ſays, he was with the Priſoner in the *Marſhalſea*, and then he asked him, What induced him to do ſo horrid a Fact? He ſaid, My Lord *Onſlow* had bewitched him: He asked him, If any body had put him upon it? At firſt he heſitated, but afterwards he ſaid, Nobody. He was very confuſed, and he thought him mad.

The next is Mr. *Darby*; he ſaid, He often examined him, could get no Anſwer from him, but ſaid, My Lord *Onſlow* had bewitched him, and was a Trouble to him. This is the Evidence on behalf of the Priſoner, to ſhow that the Priſoner is mad, and what he did, as ſuch, is no Crime; and therefore no great Weight ought to be laid upon it.

But by way of Reply, they have read Papers under his own Hand. Mr. *Barwell Smith*, he was with him, and he hath proved them to be his Hand. One Paper is the State of his Caſe, and the Witneſs writ it; but he took it from his own Mouth, which is the ſame as if he had writ it himſelf, and the Priſoner ſigned it. It happened to be blotted; this is mentioned to ſhow his Senſe, and that he was a Man of Diſtinction; ſays he, You have blotted it, it can't be read, it muſt be writ over again: The Witneſs told him, No, it would do; Well, if it be ſo, I will be ſatisfied; and he deſired the Witneſs to pray my Lord *Onſlow*, that his Irons might be taken off, for they were very grievous to him. The next Paper is (here are three) a Letter writ with his own Hand; and here is another Letter writ with his own Hand: Both Sides agree, that the Jury might have the Papers to peruſe. In this Paper, he ſays, He was excited to this by ——— and the Reſentment he expreſſed to my Lord *Onſlow*, proceeded from ſeveral Perſons perſuading him, that my Lord *Onſlow* was the Occaſion of all his Troubles, and ſeveral Perſons came here, and took the Advantage of it, and told him, that he was the Occaſion of all his Troubles: This he gives you as the Occaſion of his great Reſentment againſt my Lord *Onſlow:* This is as rational an Account as any mortal Man can give. Then there is this Letter, there he writes to my Lord *Onſlow*; it is directed, To the Reverend Lord *Onſlow*; but in the Letter it is, Pleaſe your Honour to take into your Conſideration, *&c.* and the other Letter is much to the ſame Purpoſe: Theſe you will have along with you.

Then you have Mr. *Coe*, and he went to him the Day the Fact was committed, and at that Time he would ſay nothing to him: The next Day he went again, and then he ſaid, My Lord *Onſlow* was the Occaſion of all his Troubles. The third Day he went, and asked him, If he intended to kill my Lord *Onſlow?* And he ſaid, Yes, to be ſure: Where did you intend to hit him? Says he, When I ſhoot at a Rabbit, I always aim at his Head. He went to him again, when he was in the *Marſhalſea*, and he was very ill, and he asked for ſome White-wine for him, but he ſaid, The White-wine was too ſharp for his Stomach; and then he called for ſome Sack, which he had; and he held down his Head, and ſeemed in a bad Condition: That he preſſed him to know who ſet him on work; and he ſaid, If my Lord will come here himſelf, let him, but let him not ſend any more of his Fools after me.—This Gentleman ſays, he was his School-Fellow; he was juſt of the ſame Nature then, a rugged, dogged, humourſome Fellow, hardly cared to talk or ſpeak to any body; he is juſt the ſame now, though he hath had no Converſation with him ſince; but about two Years ago, he ſee him, and he had a Fiſh in his Hand to ſell, and he asked to buy it, and offered him Sixpence for it; No, ſays he, it is honeſtly worth a Shilling, and a Shilling I will have. This is mentioned, to ſhew that he was a Man very ſenſible, made a very ſenſible Anſwer; no Man could make a properer Anſwer than this Man did.

This is the Evidence on both Sides. Now I have laid it before you, and you muſt conſider of it; and the ſhooting my Lord *Onſlow*, which is the Fact for which this Priſoner is indicted, is proved beyond all Manner of Contradiction; but whether this ſhooting was malicious, that depends upon the Sanity of the Man. That he ſhot, and that wilfully; but whether maliciouſly, that is the Thing: That is the Queſtion, Whether this Man hath the Uſe of his Reaſon and Senſe? If he was under the Viſitation of God, and could not diſtinguiſh between Good and Evil, and did not know what he did, though he committed the greateſt Offence, yet he could not be guilty of any Offence againſt any Law whatſoever; for Guilt ariſes from the Mind, and the wicked Will and Intention of the Man. If a Man be deprived of his Reaſon, and conſequently of his Intention, he cannot be guilty; and if that be the Caſe, though he had actually killed my Lord *Onſlow*, he his exempted from Puniſhment: Puniſhment is intended for Example, and to deter other Perſons from wicked Deſigns; but the Puniſhment of a Madman, a Perſon that hath no Deſign, can have no Example. This is on one Side. On the other Side, we muſt be very cautious; it is not every frantick and idle Humour of a Man, that will exempt him from Juſtice, and the Puniſhment of the Law. When a Man is guilty of a great Offence, it muſt be very plain and clear, before a Man is allowed ſuch an Exemption; therefore it is not every kind of frantick Humour, or ſomething unaccountable in a Man's Actions, that points him out to be ſuch a Madman as is to be exempted from Puniſhment: It muſt be a Man that is totally deprived of his Underſtanding and Memory, and doth not know what he is doing, no more than an Infant, than a Brute, or a wild Beaſt, ſuch a one is never the Object of Puniſhment; therefore I muſt leave it to your Conſideration, whether the Condition this Man was in, as it is repreſented to you on one Side, or t'other, doth ſhew a Man, who knew what he was doing, and was able to diſtinguiſh whether he was doing Good or Evil, and underſtood what he did; and it is to be obſerved, they admit he was a Lunatick, and not an Ideot. A Man that is an Ideot, that is born ſo, never recovers, but a Lunatick may, and hath his Intervals; and they admit he was a Lunatick. You are to conſider what he was at this Day, when he committed this Fact. There you have a great many Circumſtances about the buying the Powder and the Shot; his going backward and forward: And if you believe he was ſenſible, and had the Uſe of his Reaſon, and underſtood what he did, then he is not within the Exemptions of the Law, but is as ſubject to Puniſhment as any other Perſon. Gentlemen, I muſt leave it to you.

Then the Jury withdrew to conſider of their Verdict, and in a ſhort Time returned again.

Cler. of the Arr. Gentlemen, anſwer to your Names.

Here, and ſo the reſt.

Cler. of the Arr. Gentlemen, are you all agreed on your Verdict?
Jury. Yes.
Cler. of the Arr. Who ſhall ſay for you?
Jury. Our Foreman.
Cler. of the Arr. *Edward Arnold*, hold up thy Hand. *(Which he did.)* Look upon the Priſoner, How ſay you, Is *Edward Arnold* guilty of the Felony whereof he ſtands indicted, or Not Guilty?
Foreman. Guilty.
Cler. of the Arr. What Goods or Chattels, Lands or Tenements?
Foreman. None, to our Knowledge.
Cler. of the Arr. Then hearken to your Virdict, as the Court hath recorded it. You ſay *Edward Arnold* is guilty of the Felony whereof he ſtands indicted; and that he had not any Goods or Chattels, Lands or Tenements at the Time of the Felony committed, or at any Time ſince, to your Knowledge, and ſo you ſay all.

Whereupon, he received Sentence of Death: But at the Interceſſion of the Right Honourable the Lord *Onſlow*, his Execution was reſpited; and he continued a Priſoner in the New Goal, *Southwark*, upwards of thirty Years, and there died.

AN

APPENDIX,

CONTAINING

TRIALS, RECORDS,

ARGUMENTS IN LAW,

DYING SPEECHES, &c.

RELATING TO THE FOREGOING

Trials and Proceedings.

APPENDIX.

NUMBER I.

The Arraignement of Sir Thomas Wiat, *Knight, at* Weſtminſter, xiiii Martii, Anno Primo *Mar.* R. 1554 *.

THOU art Indicted, Sir *Thomas Wiat*, Knight, for that thou, on the 14th Daie of *Februarie*, diddeſt, at *Branforde*, in the Countie of *Middleſexe*, leavie Warre againſt our Soveraigne Ladie and Queene, her Crowne and Dignitie: How ſaieſte thoue? Art thoue Guiltie, or No?

Wiat. My Lordes, if I ſhould pleade Guiltie, ſhoulde I not be then excluded afterwards to uſe certaine Thinges that I have to ſaie?

Courte. Youe ſhall, Mr. *Wiat*, have Leave to ſaie and be heard what you can.

Wiat. Then, my Lordes, muſt I confeſs Guiltie, as in the'nd Trouthe muſt enforce me to ſaie?

I muſt acknowledge this to be a juſt Plague for my Sinnes, which I moſte grevoſlie have committed againſt God, who hath ſuffred me to fall into this beaſtlie Brutiſhenes, and horrible Offence of Treaſon.

And loe in me the like, and as ſuche, who attempted like Enterpriſe from the Beginning: For peruſe the Chronicles thorowe, and you ſhall read, that never Rebellion againſte their natural Prince and Countrie, from the Beginning, proſperid: *Henrie* the IIIIth was but a Rebell, for ſo muſte I call him; he continewed not long, but at the'nd definite, it fell into the right Lyne againe: and the Uſurpation revenged in his Blodd: For the Love of God, all youe Gentlemen that be here, remembre, and be taughte by Examples paſte, as alſo by thys my preſent Infelicitie, and moſt heynous Offence.

O moſt miſerable, miſchevous, and beaſtelie, furious Imagination of mine: For I thought, that by the Marriadge of the Prince of *Spaine*, the ſecond Parſon of this Realme ſhould have bene in Daunger.

And I who have lived a Freeman borne, ſhould together with my Cuntrie have bene brought to Bondage and Servitude by Aliens and Straungers; which brutiſhe Beaſtlines then ſeemed Reaſon, and wrought ſo farr, and to ſuch Effect, as it lead me to the Uſe and Practice of this my committed Treaſon: But nowe, underſtanding the great Commoditie, Honor, and Suretie, which this Realme ſhall receuve by this Mariadge, if it ſhall pleaſe the Quene to be mercifull unto me, thereis no Man living that ſhall more truſtelie and more faithfullie ſerve her Highenes, whatſoever the Quarrell be: I ſerved the Quene's Highenes againſte the Duke of *Northumberlande*, as my Lord of *Arundell* can witnes: My Grandfather was upon the Racke for Her Majeſties Grandfather: My Father ſerved King *Henrie* the VIIIth, and I ſerved him likewies; as alſo her Grace's Brother, and in Witneſs of my Blodd loſt in the Feilde, I carie a Mayme. I alledge not all this, either to Merit or Advaunce, for by this beaſtelie Brutiſhenes, to which moſt miſerablie I am fallen unto, I have not onelie procured my owne Deathe, but overthrowne my Houſe and Name, and defaced all my Father's Well-doings, if ever there weare any.

I will not juſtefie my ſelf in any thing, neither can I alledge any Excuſe of my Offences, but moſte humblie ſubmit my ſelf to the Quene's Majeſtie's Mercie and Pittie;

Deſiring youe, my Lord of *Suſſex*, and youe Mr. *Haſtings*, with all the reſte, to be a Meane to the Quene's Highenes for Mercie; for Pittie is the greateſte Treaſure that ever God gave to Man, and it is that which he ſpeciallie hathe choſen to himſelf, which if her Highenes will vouchesaulf on me her Mercie to beſtowe it on him who ſhal be moſte gladd to ſerve her Highenes, and readieſt to die in her Grace's Cauſe: For I proteſt before the Judge of all Judges, I never ment Hurte againſt her Highenes Parſon.

The Quene's Attornye. Mr. *Wiat*, youe have great Cauſe to be ſorie and repentante for the Faulte wherby youe have not onelie undone yourſelf, but alſo Nombres of other Gentlemen, who being true Men, might have ſerved their Countrie: Yet, if you had gone no further, it might the better have bene borne withall: Not ſo contented, you procured the Duke of *Suffolk*, a Man ſone trained to your Purpoſe, and his two Bretherne alſo, by which, without the Quene's Mercie, youe have overthrowne the noble Houſe: Yet not ſo ſtaied, youe attempted the ſecond Parſon of this Realme, who ſhould have bene all our Comfortes, wherby her Honnor is brought in queſtion; or what End it will come unto, God knoweth, and this are youe the Author of.

Wiat. Good Mr. Atturnye, as I will not in any thing juſtefie my ſelf, ſo being in Decaie to much, overchardge me not with more Miſchief, and make or ſhewe to be that I was not: I am loathe to touche any Man openlie, but that for myne owne Diſchardge, I am driven for to do: And as I have given in Confeſſion, ſo I affirme, that my Lord of *Devonſhire* ſent Sir *Edwarde Rogers* for me to come to his Houſe, and when I came, he brake the whoale Treaſon unto me; he ſaid, that he himſelf woulde go, and I cannot tell, but he ſaid he woulde doe many Things: This proves I was not the furſte.

The Quene's Sollicitor. As Mr. Atturney hathe moved youe, that is, to repent your Offence, ſo I, for my Parte, wiſhe youe the ſame: But what ment you furſte, when you roſe, to write to my Ladie *Elizabethe*'s Grace, that ſhe ſhould remove further from the Quene, and after that my Lord of *Norfolcke*'s Men fledd from him at *Rocheſter* Bridge to youe, as a joyful Newes you ſent to my Ladie *Elizabethe* of youre good Succes, and ſhe againe ſent youe Thanckes: Is not this true?

Wiat. What I have written, I confes, and it is trewe.

The Maſter of the Horſe's Queſtion. Mr. *Wiat*, weare not thies youre Wordes, and in theſe Termes, when Mr. *Cornwallis* and I weare ſent unto youe from the Quene, youe anſweared us, That the Quene ſhould goe to the Toure, and youe to have her Parſon with the Towre in keping, alſo the Treaſure, and ſutche of the Councellors as you would require; for youe ſaid youe had rather be truſted than truſte.

Sollicitor. This ſhal be ever called *Wiat*'s Rebellion, as the Rebellion of *Watt Tiler* was called *Wat Tiler*'s.

Attorney. Mr. *Wiat*, weare youe not privie howe the Quene ſhould have bene ſlaine, as ſhe did walke? I do not burden youe to conſent to this; for thus muche muſte I ſaie, youe miſliked it.

Wiat. Mr. Attorney, I furſte opened this, coming to my Remembraunce when I heard *William Thomas* would have ſlaine himſelfe, for it was his Deviſe; and he brake in this wies to Sir *Nicholas Arnolde*, Yf the Quene weare killed, quothe he, all weare well, and thereis not ſo fitt a Man to doe it as *John Fitzwilliams*. Sir *Nicholas Arnolde* toulde it Sir *James Croftes*, and he toulde it *John Fitzwilliams*, and *John Fitzwilliams* tould it me, and thus at the 4th Hande I hearde it. Then made I a Cudgell with a whoale Brent in it, with a whoale Iron and haulf a Yard of —— in it, and ſought *John Fitzwilliams* a whoale Daie, and could not finde him. The next Daie, I ſent the Cudgell by my Man, and badd him bobb him well, for the Knave is but a Spie, and to utter it he durſt not, and therefore be boulde to beate him: Thus my Man carried the Cudgell thre Daies, to have beaten him: By this it maie appere, how muche I abhorred that Practiſe.

Then was the Letter ſhewed which he wroate to the Duke of *Suffolk*, Mr. *Wiat* being then in *Southewarke*, that he ſhould mete him at *Kingſton-Bridge*, and ſo to go to *London* with him, althoughe he came with the ffewer Companye. *Wiat* at the furſte remembred no ſuch Letter; but when it was ſhewed him, he confeſſed his Hande.

It was demandid of him, what he ment to write to my Ladie *Elizabethe*; and after his Pardon offred, to refuſe alſo the Bountifulnes of the Quene to my Ladie *Elizabethe*'s Grace, among other thinges beſide recited.

Wiat. My Lords, as my Faulte is moſte vile and heynous, for the which I aſke God Mercie, and next him my Soveraigne Ladie and Quene, whom I moſte grevouſlie have offendid, appealing whoalie to her Mercie, without which I cannot challendge any thinge ſithence my Offence committed. I have ſerved her Highenes in ſuche ſorte and degree as I either coulde or am hable; for I have uttred what I knowe in all thinges, whereby I might deliver her Highenes from ſutche after Perill as the Concealement of Traitors or Treaſon might prejudice or hurte: I have done this for her Highenes Suretie, as I am bounde therunto by Dutye and Truthe, which trulie I have declared; for I thinke and certainlie beleve, ſhe is as carefull over this Realme as of that her chefeſt Jewell: I muſte confes that of all the Services I have bene in, ther was never a more deſperat Journie taken in hande, and to the'nd continewed moſte deſperatlie. And wheras it was aſked whie I refuſed the Quene's Highenes Pardon offred, unhappie Man, what ſhall I ſaie?

When I was once entred in that devilliſhe Deſperatnes, ther was no waie but to wade throughe with it that I had taken in hande; for I thoughte others had bene as forwarde as I my ſelfe; and following the Enterprize, uſed all poſſibell meanes that might endure the ſame, as writing to my Ladie *Elizabethe*, and making the Proclamation in *Southewarke*. Well, ther reſteth nowe in the Quene's Highenes, either of Juſtice by Death, which juſtlie I have deſerved with *Watt Tiler*, to make me an open Example to the Worlde's Ende; or ells of her Mercie to ſave me, and uſe my Service in ſuche ſorte as her Highenes thinckes me mete and hable to doe: And albeit that her Grace hath this my Requeſte in Writing, yet I moſte humblie beſeke you to be a meanes to the Quene's Highenes for her Mercie and Pittie, which is my laſte Hoape and onelie Refuge: And I beſeke God that the Quene maie be ſo mercifull unto me, as I meane to ſerve her Majeſtie faithefullie and trulie. God's Will be done on me. Yf ther be but two true Men, I wil be the one to die at her Grace's Foote: And ſo endid.

The Lordes promeſed to be a meanes for him: His Countenaunce was dolefull, and Teares guſhed oute continuallie.

He was afterwards executed.

* From the MS. of *D. Brereton Bourchier*, late of *Barneſly* in *Gloceſterſhire*, 9007. 8. See *Catalogi Librorum Manuſcriptorum Angliæ & Hiberniæ*, *Tom.* 2. *Part* 1. *Page* 236.

NUMBER II.

The Examinations and Depoſitions of William Powrie, George Dalgleiſh, John Hay *younger of* Talo, *and* John Hepburn *of* Bowton, *concerning the Murder of the King, Queen* Mary's *Huſband; with their Trial and Sentence: As alſo, the Declaration of* Nicolas Hubert, *a* Frenchman, *commonly called* Paris, *in relation to that Murder, and other Matters* * ;

Who were all executed for the ſaid Murder.

The Depoſitions of *William Powrie.*

Apud Edinburgum, 23 Junii, *Ann. Dom.* 1567, *in preſentia Dominorum Secreti Concilii.*

WILLIAM POWRIE, borne in *Kinſawnis*, Seruitor to the Erle of *Bothwell*, deponis, That ye ſam Day the King wes ſlane at Night, the Erle *Boithwell*, accumpanyt with *James Ormiſtoune* of yat Ilk, *Hob Ormeſtoune* his Fader Bruther, *John Hepburne* of *Bolton*, and *Johne Hay* zounger, zeid togidder to an Counſele in ye nether Hall of ye ſaid Erle *Bothwells* Ludgeing in ye Abbay, about four Houris Eftirnone, or yairby, and remanit yairin Twa Houris, or yairby; quhat yai did or ſaid, he knawis not.

Item. Deponis, Yat *John Hepburne* of *Bolton*, at Ten Houres at Evin, commandit the Deponar and *Pat Wilſoune* to tak up ane Carriage of twa Maills and ane Tronk, and ye vthir an leddirin Mail, quhilks were lyand in the ſaid nethir Hall, quhilks the Deponar and the ſaid *Pat* put on and chargit upon twa Horſes of my Lordis, the ane being his ſown Horſe, and carrit the ſame to the Zet of the Enteres of the Black Friers, and yare laid the ſame down, quhair the Erle *Bothwell*, acumpanit with *Robert Ormeſtoun* and *Paris*, called *French Paris*, and vtheris twa quhilks had Cloakes about yare Faces, met the ſaidis Deponar and *Pat Wilſoun.* And yat zoung *Tallo*, the Lard of *Ormeſtoune*, and *John Hepburne* of *Boltoun*, wes awaitand vpon ye Deponar and *Pat Wilſoun*, within the ſaid Zet; and yat yare the ſaidis thre Perſouns within the ſaid Zet, reſſauit the ſaids twa Charges, quhilks the Deponar knew to be Pulder, becauſe the ſame wes in ſundry Polks within the ſaid Mail and Tronk; and ye Deponar and ſaid *Pat Wilſoun* helpt yame in with the ſame; and the Powder being taken from yame, the ſaid *Johne Hepburne* of *Bolton* ſent this Deponar for Candell, and yat he coſt ſix Halpenny Candell fra *Georde Burnis* Wife in the *Cowgate*, and deliverit to the ſaid *Johnne:* And yat ye ſaids Perſouns Reſſavaris of the Powder, had ane Towel with them, with ane littil licht Candell; and the ſaids Perſouns within the ſaid Zet oppynit the Tronk and Mail, and tuck out the Polks with the Powder: And everie ane of yame tuck yane upon his Back, or under his Arm, and carryit the ſame away to the Back-wall of the Zaird yat is next the Trees, and yair the ſaid Laird of *Ormeſtoune*, *Johnne Hepburne* of *Boitoun*, and zoung *Tallo*, reſſavit the Pulder fra yame, and wald ſuffer the Deponar and his Marrow to paſs na furdar. And quhen the Deponar and his Marrow came bak againe to the ſaid Frier Zet, the twa Horſs that carryed the ſaid Maill and Tronk war away, and zit yay carryit the ſaids Mail and Tronk again to the Abbay, and as yay came up the Black Frier Wind, the Quenes Grace was gangand before yame with licht Torches: And yat the Deponar and his Marrow being cumin to the ſaid Erles Ludging in the Abbay, thai tarryit yare ane Hour or mair, and yan the ſaid Erle came in, and immediately tuk aff his Claythes yat wer on, *viz.* a Pair of blak Velvet Hoiſe, truſſit with Silver, and ane Doublet of Satin of the ſame Maner, and put on ane vthir Pair of black Hoiſe, and ane Doublet of Canwes, and tuk his ſide rideing Cloak about him, and incontinent paſt furth, and accumpanyt with *French Paris*, the Deponar, *Georde Dalgleiſh* and *Pat Wilſoun*, and came down the Turnpike, and alang the Back-wall of the Quenes Garden, quhill yai came to the Back of the Cunzie-houſe, and the Back of the Stabillis, while thay came to the *Cannongate.* And deponis, Yat as yai came by the Gait of the Quenes South Garden, the twa Sentinellis yat ſtude at the Zet yat gangis to the utter Cloiſs, ſpeirit at yame, Quha is yat? and yai anſwerit, Friends. The Centinel ſpeirit, Quhat Friends? and yai anſwerit, My Lord *Bothwells* Friends.

Item. Deponis, Yat yai come up the *Canongate*, and to the nether Bow, and findand the Bow ſteikand, *Pat Wilſon* cryet to *John Galloway*, and deſirit him to opin the Port to Friends of my Lord *Bothwell*, quha came and oppynit the Port, and yai enterit, and zeid up aboue *Baſſyntines* Houſe on the South-ſide of the Way, and knockit at ane Staire, and callit for the Laird of *Ormeſtone*, and *Robert Ormeſtone*, and nane anſwerit yame, and yai yan ſlippit down ane Cloiſs beneith the Frier Wynd, and come to the Zet at the Black Friers, and enterit in at yat Zet, and zeid quhill yay come to the Back-wall and Dyke, quhaire the Deponar and *Pat Wilſon* left the vtheris Perſouns before exprymit, with the Powder as ſaid is, and yaire the Erle *Bothweille* paſt in over the Dyke, and bad the Deponar, *Pat Wilſon*, and *Georde Dalgleiſh* tarry ſtill yaire while he come backwart to them. And furder deponis, Yat yai tariit yare Half an Houre, and hard never Din of any Thing, quhill at laſt my Lord, accompanyit with zoung *Tallo*, and *Johnne Hepburne* of *Boltoune*, come to the Deponar, and vtheris twa Perſons being with him, and evin as my Lord and thir Twa comes to the Deponar and his Marowis at the Dyke, thai hard the Crack, and thai paſt away togidder out at the Frier Zet, and ſinderit quhen yai came to the *Cowgait*, Pairt up the Blackfrier Wynd, and Pairt up the Cloiſs which is under the Endmyllis Well, and met not quhill yai came to the End of the Bow, and zeid down ane Cloiſs on the North-ſide of the Gait, to haif loppin the Wall of *Leith* Wynd, and yair my Lord thoucht it over heich, and came again aback to the Port, and cauſed cry upon *John Galloway*, and ſaid yai war Friends of my Lord *Bothwilis.* And *John Galloway* ruſe and let them furth, and ſyne yai paſt down St. *Mary*'s Wynd, and down the back Zairds of the *Canongait*, and to the ſaid Erles Ludging; and as yai paſt the Quenes Guards before ſpecifyit, ſum Sentinells ſpeirit at yame quha yai war, and yai anſwerit, yai war Friends of my L. *Bothweill*; and als ſpeirit quhat Crak yat was, and yai anſwerit, yai knew not; and yat the Sentinels bid them, if yai were Servandis of my L. *Bothweill*, to gang yair Way.

My Lord come into his Ludgeing, and immediately callit for ane Drink, and tuk off his Cloathes incontinent, and zeid to his Bed, and tarriet in his Bed about Half an Hour, quhen Mr. *George Hacket* come to the Zet, and knocks, and deſired to be in; and quhan he came in, he appeared to be in ane greit Effray, and was black as any Pik, and not ane Word to ſpeik. My Lord enquirit, Quhat is the Matter, Man? And he anſwerit, The Kingis Houſe is blawn up, and I trow the King be ſlayn. And my Lord cryet, Fy, Treaſoun! And yan he raiſe and pat on his Claiths. And yarefter the Erle *Huntley* and mony came in to my Lord, and yai zeid into the Quenes Houſe.

Item. Deponis, Yat upon the nixt Nicht efter, my Lord deſyrit yis Deponar, *Pat Wilſon*, *Georde Dalgleiſh*, the Laird of *Ormeſtoune*, and *Hob Ormeſtoune*, *John Hepburn*, and zoung *Tallo*, to keip thair Tongues cloiſs, and yai ſuld nevir want ſa lang as he had, and yat he ſuld ſend the Deponar and *Pat Wilſon* to the Armitage, and yat yai ſuld be honeſtly ſuſtainit. And being inquirit, Gif this Deponar, at my Lord *Bothwells* Deſyre, ſocht ane fyne Lunt of any of the Suddartis: And anſwerit, Yat he did the ſame, and gat a Piece of fine Lunt of half a Faddome, or yareby, fra ane of the Suddartis, quhais Name he knawis not, and deliverit to *Johne Hepburne* of *Boltoune*, upon *Saturday* before the Kingis Slaughter.

Apud Edinburgum, 3 Julii, *Ann. Dom.* 1567, *in preſentia Dominorum Secreti Conciliі.*

William Powrie re-examined, deponis, Yat the Cariage of the Tronk and Mail contenit in his former Depoſitioun, were carryed by him and *Pat Wilſone*, upon ane gray Horſs yat pertained to *Herman*, Page to my Lord, at twa ſundry Tymes, and war carryed and conveyit by yaim into the Place containet in his former Depoſit, and yat at the Frier Wynd Fute yis Deponar ſaid to *Pat Willſon*, at the conveying of the laſt Carriage, thir Words, Jeſu, *Patt*, quhattin ane Gait is yis we are gangand? I trow it be not gude. And he anſwerit, I trow it be not gude; but weiſt, hald zour Tongue.

Item. Deponis, Quhan the Deponar and *Pat Willſon* come to the Frier Zet with the laſt Convoy, and laid the ſame down, *Robert Ormeſtoune* come furth, and ſaid thir Words: This is not gude like, I trow this Purpois will not come to this Nycht, I will in and ſe quhat yai are doing.

Item. Yareſtir quhen the Powlder and Greaith was carryed inwart, the Deponar tarryand at the Dyke, the Laird of *Ormiſtoun* of yat Ilk came again, and ſaid to *John Hepburne* and young *Tallo*, thir Words (*Paris Frenchman* being with him) Be God it is fair in Field, cum of it quhat will, and bade the Deponar and *Pat Wilſon* gang their Way; and at the ſame tyme yat ye Deponar and *Pat Wilſon* laid down the laſt Cariage at the ſaid Frier Gait, the E. *Bothweill* came unto thame utwith the Frier Zet, accumpanyit with Thre more, quhilks had yare Cloaks, and Mulis upon yair Feet.

Item. Deponis, Yat the ſaidis *Johnne Hepburne* of *Boltone*, upon *Saturday* at Evin befoir the Kingis Slaughter, brought the Mail and Tronk quhairin the Powlder was, to the E. of *Bothwiles* Ludgeing, and laid in the ſame in the nether Hall: And the Deponar declaris, Yat at the laſt Horſe Cariage he bare up ane toome Poulder Barrel to the ſame Place yai carriet the Pulder, and yat he wiſt not how nor be quhome the ſame came in the Erle *Bothweils* Ludging in the Abby.

Item. Deponis, Yat upon the Morn eftir the Kingis Slauchter, *viz. Monondoy*, *Johne Hepburne* of *Boltoun* gat ane gray Horſe, Mr. *Young* of *Tallo* ane broun Horis fra my L. *Bothweill.*

Item. Inquirit gyf *William Geddes* Depoſition, being red to the Deponar, was trew; declairit the ſame was all trew, except the Deponar remembers not quhidder he bad and counſulit this *Geddes* not to be ——— on the Grit yat Nycht or not.

This is the trew Copy of the Depoſitions of the ſaid *William Powrie*, maid in Preſence of the Lords of Secreit Counſall, concordand and agreand with the Principal remainand at the Office of Juſticiary, collationat be me Sir *John Bellenden* of *Auchnoule*, Clerk of our Souerane Lordis Juſticiarie, witneſſing my Sign and Subſcription manual.

Joannes Bellenden, Clericus Juſticiariæ.

The Depoſition of *George Dalgleiſh.*

Apud Edinburgum, 26 Junii, *Ann. Dom.* 1567, *preſentibus comitibus de* Mortoun & Athol, *prepoſito de* Dundee, & *domino de* Grange.

George Dalgleiſh Seruande in the Chalmer to the Erle *Bothwell*, of the Aige of 27 Zeiris, or yareby, *&c.* Deponis, Yat ye *Sunday* the King was ſlayne at Nycht the E. *Bothwell*, accumpanyit with the Laird of *Ormeſtoune* of yat Ilk, *Hob Ormeſtoune*, his Fader Bruther, *John Hepburne*

* Taken from the *Cotton* Library, *ſub Tit. Caligula*, C. 1. Fol. 243, *&c.* This is the beſt and fulleſt Account of the Murder of King *Henry Darnley* ever publiſhed, and ſhould be read after the Trial of *James* Earl *Bothwell*, in Vol. I. p. 78.

of *Boltone*, *Johnne Hay* of *Tallo* zounger, war togidder in the nether Hall of the ſaid Erls Ludging in the Abby, about Four Houres in the Eſtirnone, and remained yarein ane Hour and a Half, and quhat yai did knaws not, be reſſoun the Deponar remainit for the maiſt Part in my Lords Chalmer.

Item. Deponis, Yat my Lord his Maiſter came to his Chalmer about 12 Hours at Evin, or yareby, and tuke of his Clayths, and chingit his Hois and Doublet, *viz.* ane Pair of Hoiſs ſtocket with black Welvet, paſementit with Silver, and ane Doublett of black Satin of the ſame Maner, and put on ane vther Pair of black Hoiſs, and ane Canwes Doublet white, and tuke his ſide riding Cloak about him, of ſad *Ingliſh* Claith, callit the new Colour. And incontinent the Erle, *French Paris*, *William Powry* Seruitor and Porter to the ſaid Erle, *Patt Wilſoun*, and the Deponar, zeid down the Turnepyke altogidder, and endlong the Bak of the Quenes Garden, quhill yow cum to the Bak of the Cunzie Houſe, and the Bak of the Stabillis, quhill zow come to the *Cannogate* foreanent the Abbay Zet. And depones, As yay came by the Entry of the Quenes South Garden, ane of the Sentinels yat ſtude at the Zet yat gangis to the utter Cloiſs, ſpeirit at thame, Quhais that? Yai anſwerit, Friends. Quhat Friends? Friends to my Lord *Bothwell*.

Item. Deponis, Yai came up the *Canogait* to the Nethir Bow, quhilk wes ſteikit, and yat *Patt Willſon* cryit to *John Galloway*, and bid him come down and oppin the Port and let yame in, and yat yai tarriet ane gude Quhile or *Galloway* came down to let yame in, and ſpeirit at yame, Quhat did yow out of yair Beds yat Time of Night? and eftir yay enterit within the Porte, yay zeid up aboue *Baſſyntines* Houſe on the South ſide of the Gait, and knockit at ane Dur beneth the Swordſlippers, and callit for the Lard of *Ormeſtounes*, and one within anſwerit, he was not yare; and yai paſſit down a Cloiſs beneth Frier Wynd, and enterit in at the Zet of the Black Friers, quhil thay come to the Bak Wall and Dyke of the Town Wall, quhair my Lord and *Paris* paſt in over the Wall, and commandit ye Deponar, *William Powry* and *Patt Willſoun*, to remayne ſtill quhill yai came till yame, and quhatevir yay hard or ſaw, not to ſtur or depart quhill he cam againe: And yat yis Deponar and the uther Twa tarreit yair Half an Hour or yareby, and in the meyn time hard no Din of any Thing, quhill at laſt my Lord, accumpanyit with *John Hay* zounger of *Tallo*, *Johne Hepburne* of *Bolton*, come to the Deponar, and vtheris Twa, and even as my Lord and yay Twa came to the Deponar and his Company, yay hard the Crack, and paſt all away togiddir out at the Frier Zet, and ſunderit in the *Cowgait*. My Lord, *Johnne Hepburne*, and *Pat Wilſoune*, *William Powrie* and the Deponar zeid up ane Wynd be-eſt the Frier Wynd, and croſſit the Hiegait at the Nether Bow, to haif lopin the Wall at *Leith* Wynd, bot thai thocht the Wall over hich, and came agane to the Port; and my Lord cauſſit cry upone *Johne Galloway*, and ſaid, Yay were Servands of my Lord *Bothweill*; and yat he ruſe and oppynit the Wickit, quha it wes yat ruſe, *ignorat:* And ſyne yay paſſit down St. *Mary* Wynd, and down the Back of the *Cannygait*, and to the ſaid Erles Ludging, and enterit be the ſame Turnpicke yat yai cam furth at. And as yai paſſit by the Quenes Gardens, ane of the Sentinels ſpeirit, Quha yay war? And yai anſwerit, Yai war Friends of my Lord *Bothweill*. And ſo ſoon as my Lord came in his Ludgeing he cryit for ane Drink, and incontinent yareftir tuke off his Claythes and zeid to his Bed, and lay be the Space of Half ane Hour or yareby; and yat Mr. *George Hacket* came to the Chalmer about Half ane Hour eftir my Lord lay down. Quhan he came in, he apperit to be very effrayit, and my Lord ſpeirit, Quhat is the Matter, Man? And he anſwerit, Yat he heard at the *Kirk of Field* like the Schot of ane Cannoun, and, as I hear ſay, the Kingis Houſe is blawin up, and I trow the King be ſlayne. And incontinent my Lord raiſe and pat on his Clayths, that is to ſay, the ſame Hoiſs and Doublet yat he had on upon *Sunday*, quhilks wer Peſſements with Siluer, and ſa ſone as my Lordis Clayths was on, he departit furth of the Chalmer, and the Deponar remanit ſtill in the Chalmer.

This is the trew Copy of the Depoſitione of the ſaid *George Dalgleiſh*, maid in Preſence of the Lordis before expremit, concordand and agreeand with the Principall remayning at the Office of Juſticiarie, collationat by me Sir *John Bellenden*, Knight, Clerk of our Soveraigne Lordis Juſticiary, witneſſing my Signe and Subſcriptioun manual.

Joannes Bellenden, Clericus Juſticiariæ.

The Depoſition of *John Hay* younger of *Talo*.

Apud Edinburgum 13 *die menſis* Septembris, *An. Dom.* 1567, *in Preſence of my Lord Regent, the Erles of* Morton *and* Athol, *the Lairds of* Lochlevin *and* Petarow, *Mr.* James Magyll, *and the Juſtice Clerk.*

THE quhilk Day, *John Hay* zounger of *Tallo* being examinit anent the Kingis Graces Murther, grantit and confeſſit himſelf culpable yareof, and as he wald anſwer before God, deponit and declarit the Erle *Bothwele* his Maſters Pairt of the ſame, ſa far as the Deponar knew, in Manner following, that is to ſay, That upon the 7 Day of *Februar* laſt bypaſt, before the Kingis Murther, th'Erle *Bothweil*, within his Chalmer in his Ludging in the Abbay of *Halyrudhous*, ſchew to the Deponar the Purpoſe of the Kingis Murther, ſayand thir Words or ſiclike, *Johne*, this is the Mater, the Kingis Deſtructioun is devyſit, and I mon reveill it unto ye, for an I put not him down, I can not haif an Lyfe in *Scotland*, he will be my Deſtruction, and I reveill this to the as to my Friend, and gyf zow reveill it again, it will be my Deſtruction, and I ſall ſeik yi Life firſt: And yarwith he gave the Deponar alſo diverſe Admonitions, and alſo fair Promiſes to keip the Mater ſecret, and to take Part with him in the Kingis Slaughter, as he had deviſit; and yat yareafter at Evin, in the Preſence of *John Hepburn* callit of *Bolton*, the ſaid Erle proponit the ſamyn Matter to the Deponar, quhilk *John Hepburn* was on the Counſail yairof of before. And th'Erle *Bothwell* ſaid to the Deponar, I have deviſit it in this Manner, and ye ſall do the ſame, that is to ſay, He ſaid in Preſence of *James Ormiſtoun* of yat Ilk, and the ſaid *John Hepburn*, thir Words, The Pulder mon be laid in the Houſe under the Kingis Chalmer, quhaire the Queene ſuld lye, in an Barril, gyf it may be gottin within the Barril, and the ſame Barril ſall haif an Hoill at the nether End yareof and an Tre holit and howkit like an Troch put to the Hoill of the Barril, and an Lunt yareupon, quhilk ſall be fyrit at the far End, and the unfyrit End laid in the Hoill of the Barril in the Pulder. And this Perpos ſuld haif bene put in Execution upon the *Saturday* at Night, and the Matter fayllit yat Night, becaus all Thingis were not in Reddynes yairfor.

Item. Deponit, Yat upon *Sunday* yarefter, about thre or four Houres Afternone, in th'Erle *Bothwells* nedder Houſe in the Abbaye, the ſaid Erle, *John Hepburn* of *Bolton*, and the Deponar, devyſit yat my Lord ſuld gang up to the ſaid Laird of *Ormiſton*'s Chalmer (like as he did) ſua ſone as it was mirk, and yat yare paſt with my Lord, quyet on Fute, *John Hepburn* of *Bolton*, the Deponar, and *Ade Murray* met yame, and ſum utheris quham the Deponar remembers not, at the ſaid Laird of *Ormiſtons* Stairefute of his Chalmer, above the Bow, on the South-Syde of the Gait, and yat my Lord commandit the ſaid *Ade* and utheris to paſs to Mr. *John Spenſis*, and remayne yare quhill he came to yame; and yat my Lord, *John Hepburn* of *Bolton*, and the Deponar, enterit in the ſaid Laird of *Ormiſtons* Chalmer, quhair yay fand the ſaid Lard, and *Hob Ormiſton* his Fader Bruthir, and an Bruther of the Lards, quhais Name the Deponar knaws not, and was put to the Dur: and yair yai conſullit quhat Gait yai ſuld gang to the Kingis Houſe, becaus yai had not tane Purpois yairupon of before: And ſyne yai zeid all down togydder to the Black Freir Zeit, and ye ſaid Lard of *Ormiſton* zeid in throw the awld Howſis and Wallis, and paſt and opynitt the ſaid Freir Zet to my Lord, the Deponar, and the reſt forefaid. And yat my Lord and the Deponar zeid up and down the *Kowgate*, quhile *Wille Powry* and *Pate Willſon* brocht the Powder, quhilk was brocht at twa ſundry Times, furth of the Abbay, from the Erlis Ludgeing, and yat the ſame was in a Tronk and an Mail, and was brought upon *Hermanis* Naig, and yat the Powder was reſſavit in at the Black Freir Zeit be the ſaid Lard of *Ormiſton*, and *John Hepburn* of *Boltown*, and yat the ſamyn was born in be *Wille Powry*, *Pate Wilſon*, and the ſaids Lard of *Ormiſton*, *Hob Ormiſton* and the Deponar in the Trunk and Mail. And yareftir the Powder yat was in the Trunk, was taken furth of the ſame, and put in Polks, and the Powder yat was in baith the Tronk and Mail was caryit to the Kingis Houſe in Polks.

And it is of Veritie, that *Paris* the *French* Man was in the nedder Houſe, under the Kingis Chalmer, and had an Key of the Backdowr, and then the ſaid Lard of *Ormiſton* paſt in at the ſaid Dur, and ſpake with the ſaid *Hob* his Fader Bruther, and with the ſaid *Paris*, being both therein, and fand the Time convenient, and came furth again, and tauld the ſamyn to the ſaid Erle and his Cumpany; and yat yai had with yame alſwa a Tre and a Powder Barrel, for to have done as ſaid is, but the Barrel was ſo meikle, it could not be gottin in at the Dur; and yan yay tuk all the Polks and carried yame within the ſaid laich Houſe, and temit yame on the Flour in an Heip, and the Polks weir taken furth again, and yat my Lord was in the Houſe afoir, and had left the ſaid *Paris* yarein, and the ſaid *Hob* ſtandand at the Dur awaitand upon yair Coming: And yat the ſaid Lard of *Ormiſtone* ſaid to the ſaid *John Hepburn*, Ze ken now quhat ye haif to do, quhen all is quyet aboue zow, fyre the End of the Lunt, and cum zour Way. And yareftir the ſaid Lard of *Ormiſton* paſt his Way with *Hob* with him, and *Paris*. *John Hepburn* and ye Deponar taryit ſtill within the ſaid laich Houſe a certain Space, and *Paris* lockit the back Dur, and the Dur yat paſſes up the Turnpike to the Kingis Chalmer, quhair the King, the Quene, and ye Erle *Bothwell*, and vthers were, and paſſit up to yame, levand behind him the ſaid *John Hepburn* and the Deponar lockit in the ſaid nedder Houſe; and as the Deponar believes, *Paris* ſhew the Erle *Bothwell* that all Things were in Readineſs, and ſyne ſone yareftir, the Quene and the Lordis returnit to the Abbay, my Lord *Bothwell* being in her Cumpany; and yareftir the Erle *Bothwell*, accumpanyit with *Paris* and *Geordе Dalgleiſh*, came to the back Zard, and the ſaid *Hepburn* quha had twa Keyis of the back Dur, lichtit the Lunt, and came with the Deponar, and lockit the Durris after yame, and fand the Erle of *Bothwell* in the Zaird, quha ſpeirit at yame, gyf they had done that quhilk he had bidden yame, and fyrit the Lunt; and yai anſwerit yat it was done. And efter my Lord and thai tarryit in the Zaird ane lang Tyme: and quhen my Lord ſaw yat ye Matter came not haſtily to paſs, he was angre, and wald have gen in himſelf in the Houſe, and the ſaid *John Hepburn* ſtoppit him, ſaying thir Wordis, Ze neid not. And my Lord ſaid thir Wordis, I will not gang away quhile I ſee it done; and within ane ſchort Space it fyrit, my Lord, *John Hepburn*, the Deponar, and *Paris* being gangang at the Fute of the Aley in the ſaid Zard, and quhen they ſaw the Houſe riſeand, and heard the Crack, they ran their Way, and come down the Wynd fra the ſaid Freir Zett; and yat my Lord yareftir paſt to the Wall at *Leith* Wynd, to have paſt over it, but becauſe he thocht it over hich, he ſturrit yairwith, and came back again to the neddir Bow, and paſt furth at the Port, after *Johnne Hepburne* had cried upon *John Gallaway* Porter, and cauſit him oppin the Port; and that the ſaids *John Hepburn* and *Geordе Dalgleiſh* paſſit afore with my Lord, and ſone yareftir, the Deponar and *Paris* followit, and the Deponar paſſit to his Bed in *John Hepburns* in the *Canongait*, and my Lord paſſit to his awin Ludgeing in the Abbay.

The Depoſition of *John Hepburn*, called *John* of *Bowton*.

Apud Edinburgum 8 *die menſis* Decembris, *An. Dom.* 1567, *in Preſence of my Lord Regent, the Erle of* Athol, *the Lord* Lindſay, *the Lard of* Grange, *and the Juſtice Clerk.*

THE quhilk Day, *John Hepburn*, callit *Johnne* of *Bowtoun*, being examinit upon the Kingis Murther, grantit himſelf culpable and gilty yairof, and as he wald anſwere before God, deponit and declaryt the Erle of *Bothweile* his Maſteirs Part of the ſamyn, ſo far as the Deponar knew in this Matter, that is to ſay, The firſt Tyme yat evir the Erle of *Bothwile* ſpake yis Matter of the Kyngis Murther to the Deponar, was ane Day or twa aftir the bringing of the Powder furth of *Dunbar*, at quhilk Tyme he ſaid to the Deponar in this Manner, Thair is ane Purpois

Purpois diviſit amongs ſome of the Noblemen, and amongs the reſt, yat the Kinge ſall be ſlane, and that every ane of us ſall ſend twa Servandis to the doing yarof, owther on the Fields, or otherwiſe as he may be apprehendit; and yah deſirit ye Deponar to be ane of the Entrepryſers for him; quhais Anſwer was, Yat it was ane evill Purpois, and zit, becauſe he was Servand and Couſignance to his Lordſhyp, he wald do as vtheirs wald, and put Hand to it. One the Morne yareftir, he callit *James Ormiſton* of that Ilk, the Deponar and *John Hay* zounger of *Tallo*, and break the Purpois to yame, and maid the like Declaratioune to yame, yat vthir Noblemen had as far Enteres as he in yat Matter; and yai maid to him evin ſic Anſwer as he had done. Quhether my Lord had ſchewed yame ye Purpois of befoir or not, ye Deponar knawes not. Swa every Day yare was tauking amongis yame of the ſamyn Purpois, quhill within twa Dais before ye Murther, yat the ſaid Erle changed Purpois of the ſlaying of the Kinge one the Feildes, becauſe yan it wald be knawn, and ſchew to yame quhat Way it mycht be uſit better be ye Pulder. And on the *Sunday*, in the Gloming before Nicht, ye 9 Daie of *Februar* laſt bepaſt, the Deponar ſend ye ſaid *Johne Hayes* Man for ane tome Poulder Barrel to the Man quhilk *Johne Haye* had coft the ſame fra, yat dwells above *Sandie Bruces* Cloiſe Head. At Even my Lord ſuppit in Maiſter *Johne Balfours* Hous, quhare the Biſchop of *Argyle* maid the Banket, and eftir Supper my Lord came up the Gait, and yai all with him to the ſaid Lard of *Ormeſtonis* Chalmer, quhair ye Deponar and *Johne Haye* paſt in, and fand the ſaid Lard and *Hob Ormiſtoun* his Fader Bruther; and as ye Deponar rememberis, yat was the firſt Time yat *Hob* knew of yat Matter, and yare yai ſpake togidder, and my Lord ſchewit yame ye Maner: And the Deponar, the ſaid Lard of *Ormeſtoune*, *Hob Ormiſtone*, and *Johne Haye*, paſt to the Fute of the black Freir Wind, haveing ſent away *Willie Powry* and *Pate Wilſone* for the Poulder. And before yar comming furth of the ſaid Chalmer, my Lord departit with his Servandis, quhair ye Deponar knawes not. And the ſaids Foure being togidder, as is befoir wryttin, at the Fute of the Freir Wind, the ſaid *Willie Powry* and *Pate Wilſone* cum agene with the Poulder, quhilk was brocht at two Times in ane Tronk and ane Mail, and yai carreit it in at black Freres Zet, and quhen yai war changing ye Pulder furth of the Tronks in Polks, my Lord come and ſpeirit, Gyf all was redy, and bad yame haiſte before the Queene come furth of the Kingis Houſe, for gyf ſhe come furth before yay ware reddy, yay wald not find ſic Commodity. And yan ye Pulder being put in Polks, the ſaids Laird of *Ormiſtone*, *Hob Ormiſtone*, this Deponar, *Johne Haye*, *Willie Powry*, and *Pate Wilſone* turſit up the Pouder to the Kingis Houſe, and ſand *Paris* at the Dur, quha openit the ſamyn, and yay aſſayit to have taken in the ſaid Barrell, and it wald not gang in at the Dur, and yan yai liftit the ſamyn, and brocht it back to the Zaird, and had in the Pouder, and tuming it furth of the Polks in ane Bing and Heip upon the Flur, evin directly under the Kingis Bed; and yan ye ſaid Laird of *Ormeſtone*, *Hob Ormiſton*, and *Paris* paſt away, and left the Deponar and *John Hay* within the ſaid Houſe, quhilks tarryit yarein quhill eftir twa Houres after Mydnight, and yan tuk ane Lunt, with ane litle Tre quharon it lay, and placit ye ſame, ye ane End in the Pouder, and fyrit ye vthir End, and cam yair Way, and lockit ye thre Duris behind yame; and at yair cuming furth to the Zaird, yay fand my Lord *Bothwell*, *Geordie Dalgleiſh*, *Pat Wilſon*, and *Willie Powry*; and my Lord ſpeirit at them, Gyf yay had done all Things as was ordourit: And yai ſaid, Zea; and yai tarryit upon ane Quarter of ane Hour yaireftir, and my Lord thocht lang, and ſpeirit gyf yair was ony Part of the Houſe yat they mycht ſe the Lunt gyff it was burnand anouch, and yai ſaid, Yare wes nane but ane Wundo quhilk wes within ye Cloís, and as they war ſpeeking upon it, the Houſe begouth to take Fyre and blew up, and yai ran away, and cum up black Freir Wind, and zeid down ane Clois to haif gottin over the broken Wall at *Leith* Wind, but my Lord thocht it over heich to loup, becauſe of his ſair Hand, and ſwa returnit to ye neddir Bow, and walkynit *John Galloway* Portar, quham yai gart cum down and opin the Zet; and *Willie Powry*, *Paris*, and *John Haye*, zeid evin down the *Cannongait*, and my Lord, the Deponar, *Pat Wilſon*, and *Georde Dalgleiſh*, zeid down Saint *Mary* Wind, and behind the Zairds unto my Lordis Ludgeing in the Abby. And in yair byganging, Twa of the Watchis ſpirit, quhat yai were, and ye Deponar anſwerit, We are Servands of the Erle *Bothweill*, gangand to him with News out of the Town; and ſwa my Lord paſſit to his Bed, and yis Deponar lay down in ane Bed in ye Hall. And ſone yareftir Mr. *George Hackett* came in, quha told, Yat the Houſe of the *Kirk of Field* was blawin up in the Air, and the King ſlane. And within ſhort Space yairafter my Lord *Huntley* came in, and my Lord *Bothweill* raiſs and put on his Claithis, and paſſit into the Queenis Houſe. And the Deponar tarryit ſum Tyme yareftir, and cumand furth, fand the Abbay Zeit cloſit, and yan ye Deponar fand the ſaid *John Hay* in his Bed in *John Hepburns*, and lay down with him.

Item, Deponis, Yat yare wes Fourteen falſe Keys maid for oppyning of all the Lockes of the Dures of the Kingis Ludgings at the *Kirk of Field*, quhilk the Deponar, eftir the comitting of the ſaid Murther, keiſt in the Quarie Hole betwixt ye Abbay and *Leith*.

Thir are ye true Copies of the Depoſitionis of the ſaid *John Haye* zounger of *Tallo*, and *Johne Hepburne* callit of *Boutoune*, maid in Preſence of my Lord Regent, and the Lords before mentionit, in Manner befoir expremitt, concordant and agreand with the Originalis, quhilks are remainand in the Juſticiarie, collationate be me Sir *John Bellenden* of *Auchinoul*, Knight, Clerk of our Soverane Lordis Juſticiary.

Joannes Bellenden Clericus Juſticiarie.

The Tryal and Sentence of the ſaids *William Powrie*, *George Dalgleiſh*, *John Hay*, and *John Hepburn*.

Curia juſticiariæ S. D. N. regis, tenta & inchoata in prætorio de Edinburgh *tertio die menſis* Januarii, *anno Domini milleſimo quingenteſimo ſexageſimo ſeptimo, per honorabilem virum magiſtrum* Thomam Craig, *juſtitiarium deputatum nomine nobilis & potentis domini* Archebaldi *comitis* Argadiæ, *domini* Campbell & Lorne, *juſticiarii generalis dicti S. D. N. totius regni ſui generaliter conſtituti. Sectis vocatis & curia affirmata.*

THE quhilk Day, *Johne Hepburne* callit of *Bolton*, *Johne Haye* apperand of *Tallo*, *William Powrie* and *George Dalgleiſh*, being preſent in Judgement in the ſaid Court, to be accuſit of the Dittay aftir-ſpecifeit, were putt to the Knawledge of the Perſons underwritten, quhilk were lawefully ſummoned to paſs upon yair Aſize, choiſin and admittit be thameſelues, and ſworn to deliver upon the Points of the ſaid Dittay, *viz.*

John Lockart of the *Bar*,
The Laird of *Caprinton*,
James Campbell of *Chankſtoun*,
Heugh Wallace of *Carnell*,
The Laird of *Mochrum*,
William St. Clare in *Gosfoird*,
Laird of *Gaſtoun*,
Robert Gray Burges of *Edinburt*.
John Stoddart Burges of *Edinburt*.
Williame Strang,
James Freeman Burges of *Edinburt*.
Heugh Brown yair,
Charles Geddes,
John Watſon,
James Aickman.

And immediately aftir the cheſing and ſwering of the ſaids Perſonis of Aſſys, as Uſe is, the foreſaid *John Hepburne*, *John Haye*, *William Powrie*, and *George Dalgleiſh*, being accuſit be Dittay, oppinly read in Judgement, of the Crymes following; and eftir the Reding alſwa in Jugement of certane Anſweris and Depoſitionis maid be thame of before at particular Examinationis of yame upon ye ſaidis Crymes, quhilks yai recognoſcit, and confeſſit to be of Verity in Preſence of the ſaidis Perſonis of Aſſys, the ſaid Perſonis of Aſſys removit furth of the ſaid Court, and all togiddir convenit and reſſonit upoun the Pointis of the ſaid Dittay, togiddir with ye ſaidis Depoſitionis, and ſyne being yairwith rypely avyſit, reinterit in the ſaid Court of Juſticiarie, and yair, in Preſens of the ſaid Juſtice-depute, be yair Deliverance pronouncit and declarit be ye Mouth of the Speiker *John Lochart* of the *Bar*, Chancilar of the ſaid Aſſys, fand and deliverit the ſaids *Johne Hepburne*, *John Haye*, *Williame Powry*, and *George Dalgleiſh*, to be culpable, fylit, and convict of Art and Part of the cruel, ſhamefull, treſonabill, and abhominabill Slauchter and Murther of umquhill the Kingis Grace, Fadir to our Soverane Lord, in his awin Ludging for the Tyme, within the Burgh of *Edinburt*, beſyde the *Kirk of Field*, quhair he was lyand in his Bed, taking the Nychts Reſt, treaſonably riſand Fyre within the ſame, with ane grite Quantitie of Pouder, through Force of the quhilk the ſaid haill Lugen wes raiſit and blawin in the Air, and his Grace wes murderit treſonably, and maiſt cruelly ſlane and deſtroyit by yame yarein: And als, for Art and Part of the crewall Slauchter and Murther of umquhil *William Tailzor* his Graces Servitour, and umquhil *Andro Macaig*, treſonably throw raiſing of the ſaid Fyre, as ſaid is, committit in the Cumpany with *James* ſumetime Erle *Bothwell*, now Rebel, and declarit Traitor in Parliment, and at the Horn, in the Moneth of *Februarie* laſt bypaſt, under Seilence of Nycht, upon ſett Purpoſes, Proviſioun, and forthought Felonye.

And thairfoir the ſaid Juſtice-depute, be Dome pronuncit be the Mouth of *Andro Lindeſay* Dempſtare of the ſaid Court of Juſticiarie, decernit, ordanit, and adjudgit the ſaidis *Johne Hepburne*, *Johne Haye*, *Williame Powrye*, and *George Dalgleiſh*, to haif committit the Crymes of Treſoun and leſe Majeſtie; and as manifeſt Traytours to be demanit as followis, that is to ſay, the ſaid *Johne Hepburne*, *Johne Haye*, *Williame Powrye*, to be hangit to the Deid on ane Gibbet at the Mercat Croce of *Edinburt*, and yair Heddis, Leggis, and Armis to be cuttit from yair Bodies, and put up and hangin (as for Example) on the Portis of *Edinburgh*, and vther Portis of the principall Borrowis of yis Realme, and yair Bodies to be brynt and conſumit in Fyre beſyde the ſaid Gibbet. And the ſaid *George Dalgleiſh* to be hangeit to the Deid, and his Heid to be cuttit fra his Bodye, and put upon the Port of *Edinburgh*. And ſiclyke, decernit and ordanit the ſaidis Perſonis, and ilk ane of yame, to haif foirfaulted and tynt all and ſundrye yair Landis, Heritages, Poſſeſſionis, Talkis, Steddingis, Lyferentis, Actionis, Debtis, and all vthers yair Guds, Moveables, and Unmoveables, to be inbrocht, and remaine with our Soverayne Lord, as his Eſcheat.

Extractum de libro actorum adjournalis S. D. N. Regis, per me Johannem Bellenden *de* Auchinoule, *militem, clericum juſticiariæ ejuſdem generalem, ſub meis ſigno & ſubſcriptione manualibus.*

Johannes Bellenden Clericus Juſticiariæ.

The Examination and Declaration of *French Paris.* *

A Sanctandre, *le* 10 *jour d'* Aouſt 1569. Nicholas Howbert *dict* Paris *a eſté interrogué ſur les Articles & Demands qui s' enſuivent*, &c. *& premierement.*

INterrogue quant premierment il entra en credit auec la Royne. *Reſp.* Que ce fuſt comme la Royne fuſt a *Kalendar* allant a *Glaſgow*, qu'allors elle luy baylla une Bourſe la ou il avoit envyron ou 3 ou 400 Eſcus, pour la porter a Monſieur de *Boduel*, lequel aprez auoir receu la dicte Bourſe ſur le Chemin entre *Kalendar* & *Glaſgow* luy dict, que le dict *Paris* s'en allaſt auec la Royne, & qu'il ſe tint pres d'elle, & qu' il regardaſt bien a ce qu' elle feroit lui diſant que la Royne luy donnerois des Lettres pour les luy porter, la Royne eſtant arriuee a *Glaſcow* luy dict, je t' envoyera a † *Liſlbourg*, tient toy preſt, & ayant demeure la deux Jours, auec lad. Dame laquelle eſcript des Lettres & a luy les bailla dyſant, vous dires de bouche a Monſ. de *Boduel* qu' il baille ces Lettres qui s' adreſſent a Monſ. de *Lethington* a lui meſmes, & qu' il parle a lui, & voyes les parler enſemble & regardes la faſſon de faire & qu'elle miene ilz feront car c' eſt ce diſoyt elle pour ſcauoir lequell eſt meillour pour loger le Roy a *Craigmillar* ou a *Kirk a Field*, a fin d' auoyr bon Air car s' il logeoyt a l'Abbay, le Prince pourroit bien prendre ſa Maladie a Cauſe que ces Seruiteurs ne pourroyent s' en garder d' aller veoyr le Prince: En oultre qu' il dict aud. de *Boduel* que le Roy la vouloyt

bayſer

* Taken from the *Cotton* Library, *Calig.* C. 1. Fol. 318. But the Original is in the Paper-Office.

† i. e. *Edinburgh.*

bayſer mais elle ne pas voulle de peur de ſa Maladye, choſe que *Rayres* en teſmoignoroit bien; & plus (ce dict elle) vous dires a Monſ. de *Boduel* que je ne vais jamais vers le Roy que *Rayres* n' y eſt & voyſt tout ce que je fais. *Item.* La Royne lui dict, *Paris* haſtez vous de revenir car je ne bougeray d' ici, juſques au Temps que m' aures raporte la Reſponſe.

Eſtant led. *Paris* arryué a *Liſlebourg*, trouue led. de *Boduel* en ſon Logis a l'Abbay, lequel lui diſt, Ha *Paris*, tu es le bien venue. Monſieur dict il voici des Lettres que la Royne vous envoye & auſſi a Monſieur de *Liddington*, vous priant de les luy deliurer, & que je vous vis parler enſemble pour veoir voſtre faſſon de faire & comment vous accordiez enſemble, fort bien dict il, car j' ay ce jourdhuy parlé a lui, & lui a donne vne Haquiene. Le lendemain led. *Paris* dict quil vint au Logis dud. *Boduel* par trois fois le chercher, a 8, 9 & 10 Heures & ne le ſceut jamais trouuer, mais a la fin *Powrie* le Portier lui diſt qu' il alaſt chercher, a la haulte Ville que par adventure il le trouueroit, en quelque lieu & l' ayant cherché il voit venir une Troupe de Gens de vers le *Kirk de Field*, la ou eſtoit led. Sieur de *Boduel* & Monſ. *Jacques Balfour* coſte a coſte enſemble leſquels s' en alloyent diſner au Logis dud. Monſ. *Jacques*. Led. *Paris* pria Monſ. de *Boduel* de le deſpecher vers la Royne, apres diſner dit il je le feray, & quant il retourna querir ſa deſpeche apres diſner il trouua le Sieur de *Boduel* & led. Mr. *Jacques* ſeuls Teſte a Teſte en une Chambre, & led. Sieur de *Boduel* qui eſcrivit de ſa propre Main, & apres auoir faict, il dict a *Paris*, voyla la reſponſe retourne t' en a la Royne & me recommandes bien humblement a ſa bonne Grace, & lui dictez que tout ira bien, car Monſ. *Jacques Balfour*, & moy n'auons dormis toute la Nuit, ains auons mis ordre en toute & auons apreſté le Logis, & dites a la Royne que je lui envoye ce Diamant que tu lui porteras, & que ſi j' auois mon Coeur je le luy envoyerois tres volontiers, mais je ne l' ay pas moi: Va t' en a Monſ. de *Ledington*, & lui demandez s' il veult reſcrire a la Royne, ce que led. *Paris* faicte & le trouue a la Chambre des Comptes, & lui demande s'il plaiſoit rendre la Reſponſe aux Lettres de la Royne, que Monſ. de *Boduel* lui auoit bailees. Oui (dit il) & la deſſus il prend du Papier incontinent & eſcript, & quant faict, led. *Paris* lui dict que la Royne l' auoit commandé de lui demander lequel de deux Logis ſeroit le meilleur pour le Roy, car elle ne bougera de la juſques a ce qu' il auroyſt rapporte ſa Reſponce; led. *Ledington* lui reſpondit que le *Kirk de Field* ſeroit bon, & led. Sieur de *Boduel* & lui avoent adviſé enſemble la deſſus. Ainſi led. *Paris* partit pour s' en a *Glaſcow* vers la Royne & eſtant de retour a *Liſlebourg* & auoir faict ſon Meſſage qui lui eſtoit donné deſd. Seig. de bouche la Royne lui demande, s' il avoiet veu parler Meſſ. de *Boduel* & *Lidington* enſemble dict que non, mais que Monſ. de *Boduel* lui auoit dict qu' ils avoient parler de bon Viſage enſemble, & que led. Sieur de *Ledington* eſtoit du tout a lui & que le Logis eſtoit preſt.

Item. Comme elle retournoit de *Glaſcou* vers *Liſlebourg* avec le Roy a *Kallander* il s' addreſſe un Homme de Monſ. *Boduel* aud. *Paris* & lui baille une Lettre pour la preſenter a la Royne, ce qu' il fiſt, laquelle lui demande ſy l' Homme eſtoit ſeur, je penſe dit il Madame qu' il neuſt voulu vous envoyer un Homme qui ne fuſt ſeur; la deſſus en allant, elle reſcript une Lettre & y miſt dedans un Anneau & la lui bailla, pour la bailla aud. Homme porter, choſe qu'il fiſt, pour la rapporter aud. Seig. de *Boduel*. Apres la Royne & le Roy eſtans a *Lythgow*, elle dit au *Paris* qu' elle vouluſt mettre *Gilbert Curle* Valet de Chambre chez le Roy pour ce qu' il eſtoit de bon Eſprit a fin de veoir ce qu' il feroit, car elle ne ſe fyoit point a *Sande Durham*. Dud. lieu *Johan Hay* fuſt par elle deſpeche vers Monſ. de *Boduel*, auquel elle parle aſſez long Temps; en apres auſſi *Paris* avecques des Braſſeletz aud. Sieur *Boduel*. Led. *Paris* arrivant a *Liſlebourg* lui baille les Braſſeletz, lequel Seigneur eſtoit preſt a monter a Cheval pour a aller trouuer le Roy & la Royne, auecques lequel led. *Paris* alla au deuant le Roy, lequel ils conduirent juſques a ſon Logis a *Kirk a Field*.

Interrogue s' il ſcauoit aucune privauté entre la Royne & *Boduel* durant le Temps que le Roy gyſoit a *Kirk a Field*. Reſpond, que Monſ. *Boduel* lui auoit dict que toutes les nuits *Jehan Hepburne* feroit le griet ſoubs les Galleries a *Saincte Croix*, cependant que Lady *Reires* iroit bien tard le querir pour l' amener a la Chambre de la Royne, lui defendant aſſauoir a *Paris* ſur la Vie de ne dire que ſa Femme eſtoit auueques lui.

Interrogue ſi ſauoit de l' Entrepris du meurtre du Roy depuis ſon Arrivement a *Kirk a Field* juſques au jour de l' Execution. Reſpond, que non autrement que ce qu' il en a deja depoſe en ſa Depoſition faicte le 9me de ce mois, en adjouſtant que le jour que Monſ. de *Boduel* lui auoit communiqué le fait de meurtre du Roy qui fuſt le meſme jour que la Royne couchaſt au Logis du Roy a *Kirk a Field* (ainſi comme il en ſouuient fort bien) & comme led. *Paris* vouloit dreſſer le lict de la Royne en ſa Chambre qui eſtoit droicte ſoubz la Chambre du Roy, aynſi que Monſ. de *Boduel* lui auoit commandé lors qu' il parle avecques luy au trou la ou il ſe deſcaſchoit pour fair ſes Affaires, led. Sieur de *Boduel* defendiſt aud. *Paris* de ne dreſſer le lict de la Royne droit ſoubz le lict du Roy car je y veulx mettre la Pouldre en ceſt endroit la ce dict il cette nuit la apres que le lict fuſt dreſſé en la Chambre de la Royne ce que je fis au meſmes en droit la ou il me fuſt defendu par led. de *Boduel*, la Royne me dict, Sot que tu es, je ne veulx pas que mon lict ſoyt en ceſt endroyt la & de faict le feiſt oſter, par leſquells paroles j' ay apperceu a mon Eſprit qu' elle auoit Cognoiſſance du faict, la deſſus, je prins la Hardieſſe de lui dire, Madame, Monſ. de *Boduel* m' a commandé de lui porter les clefs de voſtre Chambre & qu' il a Envie d' y faire quelque choſe, c' eſt de faire ſauter le Roy en l' air, par Pouldre qu' il y fera mettre, ne me parle poynt de cela ceſte heurecy, ce dict elle fais en ce que tu voudra. La deſſus je ne eſſaya parler plus auant: A ceſte heureci je commence a conſiderer que j' eſtois employez en ce faict meſchant. Auparauant par paroles couuertes & deſguiſes eſtant envoye de *Glaſcow* vers Monſ. de *Boduel* pour ſauoir lequel des Logis eſtoyent le meilleur, & par ce auſſi qu' il ma reſpondu alors quant il me renvoye vers la Royne, vous la dires ſi elle vous demand ce que j' ay fais que je veille toute ceſte Nuite & Monſ. *Jacques Balfour* pour apreſter le Logis du Roy.

Eſtant interrogue, ſi la Royne paſſoit plus oultre ceſte nuit ſur ce Purpos la, dict que non, mais le preſſayt apres plus fort que jamais, de parler a elle du propos de Monſ. de *Boduel* de ſa Femmes & des autres choſes & eſtant couche ne dormoyt poynt toute la nuit, ains eſcriuoit des Lettres a Monſ. de *Boduel* & les envoye par led. *Paris* au Sieur de *Boduel* enuiron l'onze a douze Heures de nuit, mais rien de creance. Et ayant deliure ceſte Lettre aud. Sieur de *Boduel* il reſcrit eſtant au lict, & en baillant la Reſponce aud. *Paris*, il lui dict, dites a la Royne que je ne dormiray point que je ne aſcheve mon Entrepriſe, quant je deburoys trayner la Pique toute ma Vie pour l' Amour d'elle.

Eſtant de retour vers la Roye *Vendredy* au Matin, luy ayant raccompté ces meſmes Paroles que luy avoyt dictes Monſ. de *Boduel*, hé bien *Paris* ce dict elle (en riant) il n'en viendra jamais ſy Dieu plaiſt a ce poynt la; & ſe diſoyt elle eſtant au lict. Et comme elle s'abilloit led. *Paris* prend les deux Clefs de la Chambre de la Royne ſelon de Commandement dud. Monſ. de *Boduel* & les lui apport, lequel ayant fait ſortir tout le Monde de ſa Chambre prend la clef d'ung Coffre qu' il avoit en ſa Pochette, & apres auoir ouuerte le dit Coffre entre des autres clefs contrefaictes toute neufues & en regardans les unes aupres des aultres, dict a *Paris*, ha! ouy elles ſont bien, raport celles la & il remeiſt les contrefaictes dedans le Coffre.

Eſtant interrogue, s' il ſcauuoyſt qui auoit faicte & baillee les clefs contrefaicts aud. Sieur de *Boduel*. Reſpond, qu' il n' en ſcauoit rien ſi non que led. Sieur de *Boduel*, lui diſt, qu' il auoit toutes les clefs des Portes de ce logis la, & que lui & Maiſtre *Jacques Balfour* auoyent eſté toute une Nuit pour chercher & ſcauoyr la meilleur Entrée; comme il a deja depoſé; mais cependant que led. *Paris* eſtoyt abſent auecques ſes clefs, *Archibald Bethun* Huiſſier demand les clefs, pour laiſſer ſortir la Royne au jardin & ne les pouuant trouuer la Royne en fuſt faſche & dict tout haut a *Paris* a ſon retour, *Paris* pourquoy auez vous emporté les clefs de ma Chambre, lequel ne lui reſpondit mot ſur l' heure, mais apres la trouuant a part lui diſt, ha Madame pourquoy m' auez vous dicte deuant le Monde que j' auois pris les clefs de voſtre Chambre, voyant que vous ſcaues bien le pourquoy; ha ce dicte elle *Paris* c' eſt tout ung: Ne te ſoucie, ne te ſoucie, & d' autant qu'il en pourroit auoir bon Souuenance comme il dict que ce *Vendredy*, la Nuyt la Royne coucha encores au Logis du Roy, & lui renvoya de reches porter des Lettres au Sieur de *Boduel*.

Interrogue, s' il auoyt rien entendu de ce purpos le *Sampmedy* au Matin. *Reſpond*, Que non, ſy non que la Royne diſt en Preſence de ceulx de ſa Chambre qu' il y auoit en quelque Querrelle entre le Roy & Monſ. de *Sainct Croix* lequel auoyt bon moyen a ceſte Heure la de tuer le Roy car il n' y auoit en la Chambre alors qu' elle pour les departir. Et dict oultre, qu' apres diſner led. Sieur de *Bothuel* lui commande de prendre la clef de la Chambre de la Royne, choſe qu' il n' auoit envie de faire, mais comme la Royne ſortoit de ſa Chambre, elle le regarde & lui commande de prendre la dite clef. Et au ſoyr la Royne eſtant a l'Abbay elle enuoy led. *Paris* vers Monſieur de *Boduel*, lui commanda lui dire de bouche allez vous en a Monſieur de *Boduel*, & lui dictez qu'il me ſemble qu' il ſeroyt le mieulx que Monſieur de St. *Croix*, avecque *Guilliame Blackatre* aillent a la Chambre du Roy faire ce que led. de *Boduel* ſcait, & qu' il parle a Monſieur de St. *Croix* touchant ce Purpos car il ſeroit mieulx ainſy qu' aultrement; & pour ce ne ſeroit qu' un peu Priſonier dedans le Chaſteau; apres auoir led. *Paris* racompté ces faicts a Monſieur de *Boduel*, il lui dict, Je parlerois a Monſieur de *Saincte Croix*, & puis j' y irois parler moy meſme al a Royne. Led. *Paris* n' a Souuenance d'aultre choſe que ce feiſt ce jour la; mais le reſte eſt contenue en ſa premiere Depoſition, juſque a ce que la Royne arriua en l'Abbaye, & Monſieur de *Boduel* s' eſtant auſſi retiré en ſa Chambre, auecque led. *Paris*, ſuruint Monſieur de *Hontely* en Compagnye de deux ou troys Seruiteurs, & ce par le chemin derriere l'Abbaye, qui mene droyt au Logis de ſon Monſieur de *Ruthven*; & apres qu' ils auoyent parlé en l' oreille enſemble, comme Monſieur de *Boduel* avoit deja commencé de changer ſes Habillements, le dict *Boduel* deiſt apres au dit *Paris*, que Monſieur de *Hontely* c' eſtoit offerte d' aller auecques lui, mais qu' il ne le vouloyt mener, quant & lui; & apres que Monſieur de *Hontely* ce fuſt partie pour aller coucher, led. de *Boduel* prend le *Tailor* & *Paris* auecques lui, comme il eſt dit en ſa primiere Depoſition a ceſte Marque +. Le *Lundy* matin entre neuf & dix heures led. *Paris* dict qu' il entra dans la Chambre de la Royne la quelle eſtoyt bien cloſe, & ſon lict tendu du noire, enſigne de Dueil, & de la Chandelles allumes dedans la ruelle, ou Madame de *Briant* luy donnoit a dejeuner ung Ouf la, ou auſſi Monſieur de *Boduel* arriue & parla a elle ſecretement ſoubz la Courtine. Ce jour la *Lundy* ce paſſe ainſi, ſans ſe que led. *Paris* parle a elle *Mardy* au matin elle ſe leue, & le dit *Paris* eſtant entré en ſa Chambre, la Royne lui demanda (*Paris* qu' as tu) Helas ce dit il je vois que chacun me regarde de coſte, ne te chaille, dit elle, je te feray bon Viſage, Perſonne ne t' oſeroit dire mot cependant, elle ne luy dit choſe de Conſequence juſques a ce qu'elle alloit a *Seton*, alors, elle luy commandaſt de prendre une Ceſſette ou il y auoit— — — — — que le Theſaurier luy auoyt apporté de *France* pour la porter a la Chambre de Monſieur de *Boduel*, qui eſtoit a ceſte heur la loge dedans le Palais, au deſſus de la Chambre la ou ſe tenoit le Conſeil & puis apres lui commanda de prendre ſon Coffre des Bagues, & les faire porter au Chaſteau, & le deliurer entre le mains de Sieur de *Skirling* pour lors Capitaine ſoubz Monſieur de *Boduel*, choſe qu' il feiſt, en apres elle voyant led. *Paris* tout faſché, elle preſſoyt ſouuent de faire Seruice a Monſieur de *Boduel*, ce qu' il n' auoit envie de faire ains demandoyt ſouuent ſon Congé & voyant cela, a la fin elle luy dit, *Paris* allez vous conſeiller auec Monſieur *Jacques Balfour*, c' eſt ung Homme d' eſprit je moy ſuis conſolée par pleuſieurs foys & me conſole de preſent.

Item, Interrogué du premiere privaute qu' il a cognoiſtre entre la Royne & Monſieur *Boduel*.

Reſpond, Que c' eſtoit alors que led. de *Boduel* conduyſoit la Royne vers *Glaſcow*, quant elle alloit querir le Roy a *Kalandar* apres ſouper aſſez tard Lady *Reyres* vint a la Chambre de Monſieur *Boduel* & voyt

& voyt led. *Paris*, la & demande, que faict ce *Paris* ici? C'eſt tout ung ce dit il *Paris* ne dira choſe que je lui defend dire, & la deſſus elle l' amene a la Chambre de la Royne, ceci c' eſtoit le ſoire deuant, que le lendemain la Royne envoya la Courſe par *Paris* aud. Monſieur de *Boduel*.

Item. En oultre il dit & declare qu'environ le Temps que led. de *Boduel* fuſt faict Duc, la Royne lui baillaſt le buffet & veſſelle d' argent de Monſieur le Prince, la ou eſtoit ces Armoyries pour la porter a Monſieur de *Bothweille* lequel luy dict que c' eſtoit pour en faire oſter la Marque de Prince, & y mettre la ſienne ce qu'il delivra a ung qui a eſpouſe une *Marguerite Hepbron*, (mais il ne ſcait bonnement ſon nom) lequel lui dit qu'il le debuoit bailler a Monſieur *Jacques Balfour* pour le faire faire.

Item. Il dict & confeſſe que la Nuyt auparauant que la Royne fuſt ravye & enlevée dud. Sieur de *Boduel*, que Monſieur d'*Ormeſton* vint parler a la Royne bien ſecretement a *Lythgow*. La deſſus, la Royne reſcript une Lettre par le dit *Paris*, & par ce qu'il ne ſcauoit bien le Chemin, la Royne le feiſt conduire par led. *Ormeſtone* chez Monſieur de *Saltoun* la ou led. Monſieur de *Boduel* eſtoit en bonne Compaignée, & meſmes les Capitaines coucher aupres de luy & d'aultres. Et trouuent led. Seigneur de *Boduel* endormy l'eſveilla, & luy dict, Monſieur voyla des Lettres que la Royne vous envoye, he bien *Paris* ce dit il couche toy la ung peu cependant je m'en vays eſcrire, & apres auoir eſcript & dict au dict *Paris*, recommende me humblement a la Royne & luy dictes que j'iray aujourdhui la trouuer ſur le chemin au pont.

Item. Eſtant interrogue, s'il ſauoit pourquoy *Joſeph* s'en alla de ce Pais. Reſpond, Que la Royne luy dict *(Paris)* il faut que tu controuuerez quelque choſe en ton eſprit pour faire peur a *Joſeph* a fin qu'il s'en aille, & voyant qu'il ne pouuoit rien faire elle luy dit, je feray faire une Lettre que tu perderas derrier luy pour luy faire peur mais lui ne pouuant ce faire, elle le feiſt dire par le Juſtice Clerk comme il peuſt qu'il euſt a comparoiſtre au Parlement choſe qu'il l'affroyaſt grandement & courut ca & la demandant ſon Congé, en fin la Royne baille neufvingt———a *Paris* pour les bailler a *Joſeph* a fin qu'il s'en allaſt, ce qu'il fiſt, & ainſi ayant receu lad. Somme il s'en alla.

Item. Dict, que *Jehan Hay* ſouuent apres la Mort du Roi le Conſeilloit & le Comfortoit bien, & qu' aultre ne le Conſoloit, que ſouuent comme Monſieur de *Huntly* le veoyt le Voyant defait le demandoit, *Paris* qu' as tu?

This is the true Copy of the Declaration of the ſaid *Nicholas Hubert*, alias *Paris*, quhairof the Principal is markit every Lef with his own Hand, and the ſame being red again in his Preſence, he avowit the ſame, and all Parts and Clauſes thereof to be undoubtedly trew.

Ita eſt Alexander Hay Scriba Secreti Conſilii S. D. N. Regis, ac Notarius publicus.

NUMBER III.

Per Indictamenta Michael' xiij° *et* xiiij° *Elizabeth' Regine*.*

Midd' INquiſitio capt' coram d'na Regina apud Weſtmonaſter' die Jovis proxim' poſt octabis ſancti Martini anno Regni d'ne Elizabeth' Dei gratia Anglie Frauncie & Hibernie Regine fidei defenſoris, &c. quartodecimo per ſacr'm Thome Greſham Militis Thome Chamberlen militis Will'mi Hollis militis Franciſci Newdigate armiger' Will'mi Hawtree armiger' Will'mi Wrightman armiger' Thome Higate armiger' Johannis Marſhe armiger' Will'mi Clarcke armiger' Anthonii Colclothe armiger' Edwardi Oſborne armiger' Johannis Iſeham armiger' Robarti Burbage armiger' Ric' Bellamy armiger' Thome Norwod armiger' Jaſper Leake armiger' & Galfridi Walkaden armiger'. Qui dicunt ſupra ſacr'm ſuum qd Thomas Dux Norf'k nuper de Remynhall in Comitatu Norf'k ut falſus proditor contra illuſtriſſimam et chriſtianiſſimam Principem d'nam noſtram Elizabeth' Dei gratia Anglie Francie et Hibernie Reginam fidei defenſorem et ſup'mam d'nam ſuam timorem Dei in corde ſuo non habens nec debit' legianc' ſue ponderans ſed inſtigatione diabolica ſeduct' cordialem dilectionem et veram debitam obedienc' quas veri et fideles ſubditi dicte d'ne Regine erga ipſam d'nam Reginam gererent et de jure gerere tenent' penitus ſubtrahere delere et extinguere intendens viceſimo ſecundo die Septembris anno regni d'cæ d'ne n're Elizabeth' Regine nunc xi^mo^ ac diverſis aliis diebus et vicibus antea et poſtea apud *Charterhouſe* in Comitatu Midd' falſo malitioſe et proditorie conſpiravit imaginat' fuit circu'ivit et compaſſavit d'cam D'nam Reginam ſupremam d'nam ſuam non ſolum de regali ſtatu tit'lo poteſtate et regimine Regni ſui Anglie penitus deprivare deponere dejicere et exhereditare veram etiam eand'm d'nam Reginam ad mortem et finalem deſtructionem adducere et ponere: Ac ſeditionem in dicto regno Anglie ſuſcitare levare et facere ac etiam ſtragem miſerabilem inter ſubdit' dicte d'ne Regine per totu' Regnu' Anglie gen'are et cauſare, ac inſurrectionem et rebellionem verſus d'cam d'nam Reginam ſupremam et naturalem d'nam ſuam procurare et ſuſcitare, ac guerram publicam et acerrimam infra hoc Regnum ſuum Angl' contra ipſam d'nam Reginam ſuſcitare levare et habere ac gubernationem ejuſdem Regni et ſinceram Dei religionem in eodem Regno recte et pie ſtabilit' pro voluntate et liberto ſuis mutare et alterare necnon ſtatum totius reipublice per univerſas ſuas p't' bene inſtitut' et ordinat' totaliter ſubvertere et diſtruere et diverſos extraneos et alienigenos non exiſtent' ſubdit' dicte d'ne Regine ad hoc regnum Angl' hoſtiliter invadend' et guerram acerrimam verſus eandem D'nam Reginam in eodem Regno levand' ſuſcipiend' et faciend' incitare procurare et inducere: Et ad illa nequiſſima et nephandiſſima proditoria imaginationes compaſſa'cones inten'cones et propoſit' ſua pred'ca perimplend' et perficiend' ip'e idem Thomas Dux Norf'k ſciens et perfect' intelligens Mariam nuper Scotorum Reginam clamaſſe et pretendiſſe tit'lum et int'eſſe ad preſentem poſſeſſionem et ſtatu' imp'alis Corone hujus Regni Angl' Scienſque et perfecte intelligens qd predicta Maria nuper Scotorum Regina preantea falſiſſime nequiſſime et injuſtiſſime aſſeveraſſet et affirmaſſet qd prefat' d'na n'ra Regina Elizabeth' nullum jus neque titulum ad Coronam hujus Regni Angl' h'uit. Et etiam ſciens perfecteque intelligens qd prefat' Maria nuper Scotorum Regina falſiſſime nequiſſime et injuſtiſſime uſurpaſſet ſtilu' titulum et Regine nomen hujus Regni Angl'. Et qd ipſa prefat' Maria nuper Scotorum Regina ſcripſiſſet et no'iaſſet ſeip'am in divers' ſuis Script' Reginam Angl': Et quod ip'a ead'm Maria nuper Scotorum Regina geſſiſſet et conjungiſſet arma hujus Regni Angl' cum armis Regni Scotie tam in Sigillis et vaſibus ſuis argenteis q'm in aliis rebus ſine aliquali differens' ſive diſtinctione. Et inſuper ſciens perfecteque intelligens quod dicta Maria nuper Scotorum Regina non revocaſſet nec renunciaſſet iniqua et injuſta clam' et uſurpac'oes ſua pred'ca xxiiij^tio^ die Septembris anno regni d'ce d'ne Elizabeth' nunc Regine Anglie xi^mo^ ac diverſis aliis diebus et vicibus antea et poſtea apud *Charterhouſe* pred'cam in Com' Midd' predict' falſo ſubdole & proditorie querebat et conabat ſine aſſenſu conſenſu et agreament' prefat' d'ne n're Elizabeth' Regine ſupreme d'ne ſue ſeip'm conjungere et in Matrimonio copulare cum prefat' Maria nuper Scotorum Regina. Et eiſdem de cauſa et propo'ito ip'e idem Dux pred'co xxiiij^tio^ die Septembris anno undecimo ſupradicto et diverſis aliis diebus et vicibus antea et poſtea apud *Charterhouſe* pred'cam in Com' Midd' predict' falſo ſubdole et proditorie ſcripſit diverſas literas ad prefatam Mariam nuper Scotorum Reginam et tam eaſdem l'ras quam diverſa ſigna et pignora voc' *Toakens* ad illam prefatam Mariam nuper Scotorum Reginam pred'co xxiiij^tio^ die Septembris anno undecimo ſupradicto et diverſis aliis diebus et vicibus antea et poſtea falſo ſubdole et proditorie miſſit. Necnon eodem xxiij^tio^ die Septembris anno Regni d'ce Regine xi^mo^ ſupradicto et diverſis aliis diebus et vicibus antea et poſtea apud *Charterhouſe* pred'cam in Com' Midd' predict' falſo ſubdole et proditorie mutuo dedit et accommodavit tam prefat' Marie nuper Scotorum Regine quam amicis et adherentibus ſuis plures et diverſas magnas pecuniarum ſummas: Necnon a prefat' Maria nuper Scotorum Regina pred'co xxiij^tio^ die Septembris anno Regni d'ce d'ne Elizabeth' Regine undecimo ſupradict' et diverſis aliis diebus et vicibus antea et poſtea apud *Charterhouſe* pred'cam in Com' Midd' predict' diverſas literas ac diverſa ſigna et pignora vocat' *Toakens* falſo ſubdole et proditorie recepit et h'uit licet prefat' Dux tunc antea per prefat' d'nam Elizabeth' Reginam ſuper debit' legianc' ſue ſp'ialit' prohibitus et vetitus fuit quod nullo modo intromittet ſive tractaret de maritagio cu' prefat' Maria nuper Scotorum Regina faciend' licet etiam prefatus Dux per diverſas litteras et inſtrument' manu propria ip'ius Ducis ſcript' et per prefat' ducem d'ce d'ne Elizabeth' Regine ſupreme d'ne ſue miſſa et exhibit' preantea prefat' maritagium penitus recuſaſſet et renuntiaſſet proteſtans et affirmans ſe in eodem maritagio nunquam intromiſſurum ſive aliqualit' proceſſurum: Et etiam iidem Jur' ulterius ſuper ſacr'm ſuum pred'c'm preſentant et dicunt quod cum Thomas Comes Northumbr' nuper de *Topclif* in Com' Ebor' et Anna uxor ejus, Carolus Comes Weſtmerl' nuper de *Branſpeth* in Comitatu Dunelm', Richardus Norton nuper de *Norton Conyers* in Comit' Ebor' armiger, Thomas Markenfeild nuper de *Markenfeld* in dict' Com' Ebor' armiger ſimul cum aliis falſis proditoribus rebellatoribus & inimicis publicis d'ce d'ne Regine Elizabeth' Deum pre oculis ſuis non habentes nec debitum legiantiar' ſuarum ponderant' ſed Inſtigatione diabolica ſeduct' machinantes deviſantes et conſpirantes d'cam d'nam Reginam Elizabeth' de regali Statu titulo et poteſtate Regni ſui Angl' dejicere et diſhereditare, necnon eand'm d'nam Reginam ad mortem et finalem deſtructionem adducere et ponere ea intentione ut illas proditiones conſpirationes et imaginationes ſuas perimplerent et ad effectum redigerent decimo ſexto die Novembris anno Regni d'ce d'ne Regine nunc undecimo ap'd *Rippon* in d'co Com' Ebor' contra dictam d'nam Reginam ſupremam D'nam ſuam ex eor' co'i propo'ito et aſſenſu cum magna multitudine gentium ad numerum quatuor mille homin' et ultra modo guerrino armati et arraiat' ſeip'os illicite falſo et proditorie inſimul congregaver' et aſſemblaver' ac guerram publicam et acerrimam verſus dictam d'nam Reginam Elizabeth' ſupremam d'nam ſuam apud *Rippon* predictam dicto xvi die Novembris anno undecimo ſupradicto falſo et proditorie paraver' ordinaver' et levaver', De quibus omnibus et ſingulis proditionibus rebellionibus et conſpirationibus pred'cis dicti Thomas Comes Northumbr' et Anna uxor ejus, Carolus Comes Weſtmerl', Richardus Norton, et Thomas Markenfelde cum multis aliis dictorum falſorum proditorum et rebellatorum predict' per debit' legis formam legitime indictat' et poſtea ſuperinde legitime utlagat' et attinct' fuer' et adhuc exiſtunt prout per ſeperal' record' inde in Cur' d'ce d'ne Regine nunc coram ip'a Regina remanen' plene liquet de record' cumque poſt perpetrationem et commiſſionem nequiſſimarum proditionu' predictarum in forma pred'ca per ip'os factaru' et commiſſarum predicti Thomas Comes Northumbr' et Anna uxor ejus, Carolus Comes Weſtmerl', Richardus Norton et Thomas Markenfelde, ac quamplures alii falſorum proditorum et rebellatorum predict' xx^mo^ die Decembris anno Regni d'ce d'ne Regine nunc undecimo pro proditionibus illis extra hoc regnum Angl' in regnum Scotie fugier' et receſſer' et ib'm per quoſdam proceres et magnates dicti regni Scotie ſcil't per Jacobum Ducem Chaſtle le Roy, Comitem de Huntley, D'num Harris, D'num Hume, D'num de Buclughe et D'num de Fermhurſte, et alios Scotos Subditos d'ci Regni Scotie exiſten'

* This is the indictment of *Thomas* Duke of *Norfolk*, tried 1571. 14 *Eliz.* See his Trial, Vol. I. Pag. 82. and copied from the M. S. of *D. Brereton Bourchier*, late of *Barneſly* in *Gloceſterſhire*. 9007-8.

recept' auxiliati et confortati fuer', ac de eadem d'na Regina Elizabeth' detent' in et verſus quos proceres et magnates pred'cos d'ci Regni Scotie eadem d'na Elizabeth' Regina poſtea pro eadem cauſa per prenobilem Thomam Comitem Suſſex ejuſdem d'ne Regine in partibus borealibus locu' tenen' ſuum generalem cum potenti & forti exercitu armatorum hominum apertam & publicam guerram proclamavit levavit & fecit, tanquam verſus hoſtes & inimicos ſuos et regni ſui Anglie, rac'one cujus guerre prefat' Carolus Comes Weſtmerl' Anna uxor dicti Thome Comitis Northumbr' Richardus Norton & Thomas Markenfielde a predicto Regno Scotie uſque Antverpia in partibus Brabantie fugier' receſſer' et transferaver', ac ib'dem Carolus Comes Weſtmerl' Anna uxor dicti Thome Comitis Northumbr' Richardus Norton et Thomas Markenfeilde contra legiantiarum ſuarum, debit' morabant' in manifeſtum contempt' d'ce domine Regine nunc & legum ſuarum, Pred'cus tamen Thomas Dux Norf'k premiſſorum non ignarus ſed ea omnia & ſingula in forma pred'ca bene & perfecte intelligens et ſciens vj die Auguſt' anno regni d'ce d'ne Elizabeth' Regine duodecimo ſupradicto apud *Charterhouſe* pred'cam in Com' Midd' predict' ac diverſis aliis diebus et vicibus antea et poſtea pred'co Carolo Comiti Weſtmerl' ac prefat' Anne uxori predicti Thome Comitis Northumbr' diverſas pecuniarum ſummas pro auxilio adjument' relevamine conforta'cone et ſupportatione ſuis mitti delib'rar' et diſtribui falſo et proditorie procuravit et cauſavit, Et inſuper quod idem Thomas Dux Norf'k xvj die Julii anno regni d'ne n're Elizabeth' Regine Angl' tertiodecimo apud *Charterhouſe* pred'cam in Com' Midd' predict' ac diverſis aliis diebus et vicibus antea et poſtea eiſdem prefat' Jacobo duci Chaſtle de le Roy, Comiti de Huntley, D'no Harris, D'no Hume, D'no de Buclughe, D'no Fermhurſt, inimicis publicis dicte d'ne Elizabeth' nunc Regine Angl' tunc exiſten' falſo et proditorie fuit adherens confortans et auxilians: Et ulterius Jur' predicti per ſacr'm ſuu' predictum preſentant et dicunt quod cum Pius quintus modo Ep'us Romanus eſt et exiſtit et ad'm fuit notabilis capit'lis et publicus inimicus d'ce d'ne n're Regine Elizabeth' et hujus Regni Anglie, Quod idem prefat' Thomas Dux Norf'k hoc bene ſciens et intelligens decimo die Martii anno regni ejuſdem d'ne Elizabeth' Regine tertiodecimo apud *Charterhouſe* pred'cam in Com' Midd' predict' ac diverſis aliis diebus et vicibus antea et poſtea ea inten'cone ut prodic'ones pred'cas ad effectum produceret falſo ſubdole & proditorie conſentiit adviſavit et procuravit quendam Robartum Ridolphie mercatorem alienig'num extra hoc regnum Anglie mitti ad prefat' Ep'm Romanu' nec non ad Philippu' Regem Hiſpaniarum et Ducem de Alva ad obtinend' de ip'o prefat' Ep'o Romano quaſd'm pecuniaru' ſummas imponend' exponend' circa proviſionem et maintentionem exercitus millitu' ac hominu' armatorum ad intrand' et invadend' hoc regnum Anglie & ad guerram levand' ſuſcipiend' maintenend' in eodem regno contra ip'am D'nam n'ram Elizabeth' reginam: Ac quod idem Rex Hiſpaniarum per mediationem dicti Ducis de Alva mitteret in hoc regnum Anglie quendam exercitum armatorum hominu' et militu' ad hoc regnu' Anglie invadend' ac ad guerram publicam et acerrimam contra d'cam d'nam Reginam Elizabeth' levand' ſuſcipiend' et maintenend': Et etiam quod idem Thomas Dux Norf'k eodem x° die Martij anno regni dicte d'ne Elizabeth' Regine tertiodecimo ſupradict' ac diverſis aliis diebus et vicibus antea et poſtea apud *Charterhouſe* pred'cam in Com' Midd' predict' falſo nequiter et proditorie conſpiravit conſentiit et agreavit cum prefat' Rob'to Ridolphie ſuſcitare & movere et excitare infra hoc Regnum Anglie totam vim & potentiam quas ip'e pred'cus Thomas Dux Norf'k et confederati ſui aliquo modo valerent ſive potuiſſent facere vel excitare infra hoc regnum Anglie ad conveniend' cum prefat' exercit' armatorum hominu' per dictu' Regem Hiſpaniarum ut prefert' mittend', et cum eodem exercitu armatorum hominu' et cum talibus aliis ſubditis hujus Regni Anglie quos idem Dux Norf'k comparere et procurare potuiſſet conjungere cum dicto exercitu per dom' Regem Hiſpaniaru' ut prefert' mittend' guerram publicam contra dictam d'nam Elizabeth' Reginam infra hoc Regnu' ſuu' Anglie levare ſuſcipere et manutenere et eandem Mariam nuper Scotorum Reginam extra cuſtod' et poſſeſſionem ejuſdem d'ne n're Elizabeth' Regine Anglie eripere et liberare ac predictam illuſtriſſimam et Chriſtianiſſimam d'nam n'ram Elizabeth' Reginam de regali ſtatu titulo poteſtate preheminentia & regimine hujus regni ſui Anglie penitus deprivare deponere dejicere et exhereditare, nec non ſe eundem Thomam Ducem Norf'k in matrimonio cum prefat' Maria nuper Scotorum Regina conjungere et copulare.

Et ulterius Jur' pred'ci ſuper ſac'm ſuu' pred'cm dicunt et preſentant quod cum prefat' Robartus Ridolphie tres ſeperales l'r's credentiales in no'ie prefat' Thome Ducis Norf'k pro ip'o Robarto Ridolphie in ſuis falſis nequiſſimis et proditoriis nuntiis pred'cis videl't unam earundem l'rarum ad prefat' Ducem de Alva, alteram ad prefat' Ep'm Romanum, ac tertiam ad prefat' Phillippu' Hiſpaniarum Regem transferend' et tranſportand' compoſuiſſet et ſcripſiſſet quod poſtea ip'e id'm Thomas Dux Norf'lk falſo et proditorie intendens volens et a'io ſuo conſiderans ſucceſſionem effectum et complemen' in predictis falſis et proditoriis nunciis per prefat' Robartum Ridolphie ut prefertur miſſis quendam Will'm Barker generoſum ſervientem ipſius Thome Ducis Norf'k xx° die Martii anno regni d'ce d'ne Regine nunc tertiodecimo ſupradicto apud *Charterhouſe* pred'cam in Comitat' Midd' predict' falſo ſubdole & proditorie ad Guerrau' Deſpes ambaſſatorem dicti Phillippi Hiſpaniarum Regis miſit ad declarand' oſtendend' et affirmand' predicto ambaſſatori predicti Phillippi Hiſpaniarum Regis quod ip'e idem Thomas Dux Norf'k affirmabat et affirmare vellet predictas l'ras credentiales ad prefat' Ducem de Alva Romanu' Ep'm et Philip' Hiſpaniaru' regem no'ie ſuo compo't & ſcript' adeo valent' & firmiter prout ipſemet idem Thomas Dux Norfolk eaſdem manu ſua propria ſubſcripſiſſet: Et inſuper iidem Jur' ſuper ſacr'm ſuu' predictum preſentant et dicunt quod predictus Robartus Ridolphie xxvj° die Martij anno regni d'ce d'ne Elizabeth' nune Regine Anglie tertiodecimo ſupradicto apud *Doaver* in Com' Can' extra hoc regnum Anglie ad et uſque partes ext'as et tranſmarinas iter ſuu' arripuit ad preficiend' perimplen' et exequend' dict' proditoria nuncia per conſenſum agreament' prefat' Thome Ducis Norf'k poſteaque pred'cus Ridolphie eadem nequiſſima et proditoria nuncia ſua in partibus ext'is et tranſmarinis tam prefat' Duci de Alva quam prefat' Ep'o Romano narravit retulit et declaravit et communicavit. Et quod pred'cus Robartus Ridolphie poſt pred'cm exit' et receſſionem ſuu' extra hoc regnu' Anglie, ac poſt eadem falſa nequiſſima et proditoria nuntia ſua pred'ca prefat' Duci de Alva narrat' declarat' et fact' una l'ram ſuam in quibuſdam ſubdolis alienis et inconſuetis characteribus et notis Anglic' dict' *Ciphers* ad prefat' Thomam Ducem Norf'k ſcribi fecit et miſit. Quam quidem l'ram ſic ut preſert' ſcript' miſſam ip'e idem Thomas Dux Norf'k xviij° die Aprilis anno regni d'ce d'ne Elizabeth' Regine xiij° ſupradict' apud *Charterhouſe* pred'cam in Com' Midd' predict' falſo et proditorie recepit et h'uit et eand'm adtunc et ib'm prefat' Will'mo Barker ſervienti ſuo in l'ras cognitas et comm's reducend' et decipherand' Anglic' dict' *To be deciphered* lib'avit et dedit, et eand'm l'ram in co'es et cognitas litteras reduct' et decipheratam Anglic' dict' *deciphered* ip'e id'm Dux poſtea xxv die Aprilis anno regni dicte d'ne Elizabet' nunc tertiodecimo ſupradicto apud *Charterhouſe* pred'cam in dicto Com' Midd' falſo et proditorie recepit inſpexit et perlexit et penes ſe adtunc et ib'm falſo et proditorie retinuit et ſervavit, per quam quidem l'ram predictus Robartus Ridolphie eidem Thome Duci Norf'k inter alia ſignificavit eumque certiorem fecit de benigna audientia ſua quam ip'e id'm Robartus h'uit apud prefat' Ducem de Alva in nequiſſimis et proditoriis nuntiis ſuprad'cis: Et quod id'm Dux de Alva requiſivit et voluit amicos et fautores confederationis et p'poit predict' paratos eſſe quandocunque potentia per dictum Hiſpaniarum regem mittend' infra hoc Regnu' Anglie applicaret: Et preterea iid'm Jur' ſuper ſacr'm ſuu' pred'cu' preſentant et dicunt quod pred'cus Thomas Dux Norf'k xvj° die Junii anno regni d'ce d'ne Elizabeth' Regine nunc xiij° ſupradict' apud *Charterhouſe* predict' in Com' Midd' predict' a prefat' Pio quinto Romano epiſcopo unam l'ram eidem Duci dir'cam falſo et proditorie recepit per quam id'm Epiſcopus Romanus promiſit eidem Thome Duci Norf'k auxiliu' et ſupplementum pro adjuvamine predicto Marie nuper Scotorum Regine, ac pro et ad nequiſſima et proditoria propo'it' et intentiones predict' exequend' et perficiend' contra legiancie ſue debitum ac contra pacem dicte d'ne Elizabeth' nunc Regine Anglie coronam et dignitat' ſuas et in legum hujus Regni Anglie contempt' manifeſtum. Nec non in peſſimu' et pernitioſiſſimu' exemplum omniu' aliorum in tali caſu delinquen' ac contra formam diverſorum Statut' in hujuſmodi caſu editor' et proviſor' &c.

Et modo ſcil' d'co inſtantis die Martii, viz. xvj° die Januarii anno xiiij° ſupradicto coram prefat' Georgio Comite Salop preclari ordinis Garterii milite et hac vice Anglie Seneſcallo apud Weſtmonaſter' in magna aula pl'itorum ib'm ven' predict' Thomas Dux Norf' ſub cuſtod' prefati Owini Hopton Milit' locum tenen' d'ne Regine dicte Turris London' in cujus cuſtod' preantea ex cauſa predicta & aliis certis de cauſis commiſſus fuit ad barram hic duct' in propr' perſona ſua, qui committit' prefato locumtenenti, &c. Et ſtatim de omnibus et ſingulis ſep'alibus proditionibus pred'cis ſibi ſuperius ſeperatim impo'it alloquut' qualiter ſe velit inde acquietari, dicit quod ipſe in nullo eſt inde culpabil' et inde de bono et malo pon' ſe ſuper pares ſuos, &c.

Super quo predicti Reginald' Comes Rand' Will'mus Comes Wigorn' ac ceteri antedicti Comites et Barones, pred'ci Thome Ducis Norf'k pares inſtant' ſuper eorum fidelitatibus et legianciis dicte d'ne Regine debit' per prefatum Seneſcallum Anglie ab inferiore pare uſque ad ſupremu' par'm illorum ſeperatim publice examinat' quilib't eorum ſeperatim dic' quod predictus Thomas Dux Norf'k de ſeperalibus p'ditio'b's predictis ſibi ſeparatim dic' quod predictis ſibi ſeperatim in forma predicta ſuperius impo'it eſt inde culpabil' modo et forma prout per ſeparales indictament' predict' ſuperius ſuppo' &c.

Super quo inſtanter Servien' d'ne Regine ad legem, ac ipſius d'ne Regine Attorn' juxt' debit' legis formam petunt verſus eundem Thomam Ducem Norf'k judicium et executionem ſuperinde pro d'ca d'na Regina h'end' &c.

Et ſuper hoc vis' et per Cur' hic intellect' omnibus et ſingulis premiſſis Con' eſt quod predictus Thomas Dux Norf'k ducat' per prefat' Locumtenen' uſque dict' Turrim London' et deinde per mediu' Civitat' London' uſque ad furcas de *Tiborne* trahatur et ib'm ſuſpendat' et vivens ad terram proſternat' ac interiora ſua extra ventrem ſuu' capiant' ip'oq' vivente comburent', et caput ejus amputetur quodque corpus ejus in quatuor partes dividat', ac quod caput et quarteria illa ponantur ubi d'na Regina ea aſſignare voluerit, &c.

NUMBER

NUMBER IV.

The bringing Sir WALTER RALEIGH *to Execution* *.

SIR *Walter Raleigh*, by Vertue of His Majeſty's Writ of *Habeas Corpus*, was brought to the King's Bench Bar, at *Weſtminſter*, where he was proceeded againſt, as follows.

Firſt, the Writ, delivered to the Judges by Sir *Walter Apſly*, was read, purporting, That whereas Sir *Walter* being long before, in the Preſence of divers noble Perſonages, legally convicted of High-Treaſon, at *Winchester*, was then and there adjudged to be hanged, drawn, and quartered. After the reading of this Writ, *Mr. Attorney*, Mr. *Henry Yelverton*, ſpake, in Effect, thus:

My Lords, Sir *Walter Raleigh*, the Priſoner at the Bar, was, Fifteen Years ſince, convicted of High-Treaſon, by him committed againſt the Perſon of His Majeſty, and the State of this Kingdom, and then received the Judgment of Death, to be hang'd, drawn, and quarter'd: His Majeſty, of his abundant Grace, hath been pleaſed to ſhew Mercy upon him till now, that Juſtice calls unto him for Execution.

Sir *Walter Raleigh* hath been a Stateſman, and a Man, who, in Regard of his Parts and Quality, is to be pitied: He hath been as a Star, at which the World hath gazed; but Stars may fall, nay, they muſt fall, when they trouble the Sphere wherein they abide. It is therefore His Majeſty's Pleaſure now to call for Execution of the former Judgment, and I now require Order for the ſame.

Then Mr. *Fanſhaw*, Clerk of the Crown, read the Record of the Conviction and Judgment, and called to the Priſoner, to hold up his Hand, which he did. Then was the Priſoner asked, What he could ſay for himſelf, why Execution ſhould not be awarded againſt him?

Sir *Walter Raleigh*. My Lords, my Voice is grown weak, by reaſon of my late Sickneſs, and an Ague, which I now have; for I was even now brought hither out of it.

Lord Chief Juſtice. Sir *Walter*, your Voice is audible enough.

Sir *Walter*. Then, my Lord, all that I can ſay is this; That the Judgment which I received to die ſo long ſince, I hope it cannot now be ſtrained to take away my Life; for that ſince it was His Majeſty's Pleaſure to grant me a Commiſſion to proceed in a Voyage beyond the Seas, wherein I had Power, as Marſhal, on the Life and Death of others, ſo, under Favour, I preſume I am diſcharged of that Judgment: For, by that Commiſſion, I departed the Land, and undertook a Journey, to honour my Sovereign, and to enrich his Kingdom with Gold, of the Ore whereof this Hand hath found and taken in *Guiana*; but the Voyage, notwithſtanding my Endeavour, had no other Succeſs, but what was fatal to me, the Loſs of my Son, and waſting of my whole Eſtate.

Being about to proceed, he was, by the Lord Chief Juſtice, interrupted, who ſpake.

Lord Chief Juſtice. Sir *Walter Raleigh*, this which you now ſpeak, touching your Voyage, is not to the Purpoſe, neither can your Commiſſion any Way help you; by that you are not pardon'd; for by Words of a ſpecial Nature, in Caſe of Treaſon, you muſt be pardon'd, and not implicitly. There was no Word tending to Pardon in all your Commiſſion, and therefore you muſt ſay ſomething elſe to the Purpoſe; otherwiſe, we muſt proceed to give Execution.

Sir *Walter Raleigh*. If your Opinion be ſo, my Lord, I am ſatisfied, and ſo put myſelf on the Mercy of the King, who I know is gracious; and, under Favour, I muſt ſay I hope he will be pleaſed to take Commiſeration upon me. As concerning that Judgment which is ſo long paſt, and which, I think, here are ſome could witneſs, nay, his Majeſty was of Opinion, that I had hard Meaſure therein.

Lord Chief Juſtice. Sir *Walter Raleigh*, you muſt remember yourſelf; you had an honourable Trial, and ſo were juſtly convicted; and it were Wiſdom in you now to ſubmit yourſelf, and to confeſs your Offence did juſtly draw upon you that Judgment which was then pronounced againſt you; wherefore I pray you attend what I ſhall ſay unto you. I am here called to grant Execution upon the Judgment given you Fifteen Years ſince; all which Time you have been as a dead Man in the Law, and might at any Minute been cut off, but the King in Mercy ſpared you. You might think it heavy, if this were done in cold Blood, to call you to Execution, but it is not ſo; for new Offences have ſtirred up his Majeſty's Juſtice, to remember to revive what the Law hath formerly caſt upon you. I know you have been valiant and wiſe, and I doubt not but you retain both theſe Virtues, for now you ſhall have Occaſion to uſe them. Your Faith hath heretofore been queſtioned, but I am reſolved you are a good Chriſtian, for your Book, which is an admirable Work, doth teſtify as much. I would give you Counſel, but I know you can apply unto yourſelf far better than I am able to give you; yet will I, with the good Neighbour in the Goſpel, who finding one in the Way, wounded and diſtreſſed, poured Oil into his Wounds, and refreſhed him, I give unto you the Oil of Comfort; though, in reſpect that I am a Miniſter of the Law, mixed with Vinegar. Sorrow will not avail you in ſome Kind: For, were you pained, Sorrow would not eaſe you; were you afflicted, Sorrow would not relieve you; were you tormented, Sorrow could not content you; and yet, the Sorrow for your Sins would be an everlaſting Comfort to you. You muſt do as that valiant Captain did, who perceiving himſelf in Danger, ſaid, in Defiance of Death; *Death, thou expecteſt me, but, maugre thy Spite, I expect thee.* Fear not Death too much, nor fear not Death too little; not too much, leſt you fail in your Hopes; not too little, leſt you die preſumptuouſly: And here I muſt conclude with my Prayers to God for it; and that he would have Mercy on your Soul. And ſo the Lord Chief Juſtice ended with theſe Words; Execution is granted.

Sir *Walter Raleigh*. My Lord, I deſire thus much Favour, that I may not be cut off ſuddenly; for I have ſomething to do in Diſcharge of my Conſcience, and ſomething to ſatisfy his Majeſty in, ſomething to ſatisfy the World in; and I deſire I may be heard at the Day of my Death. And here I take God to be my Judge, before whom I ſhall ſhortly appear, I was never diſloyal to his Majeſty, which I will juſtify where I ſhall not fear the Face of any King on Earth: And ſo I beſeech you all to pray for me.

De Warranto ſpeciali pro decollatione Walteri Raleigh, *Militis.*

A. D. 1618. *Rymer's Fœdera*, Vol. 17. pag. 115. Edit. 1717.

JAMES, by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faithe, *&c.* To our righte Truſtye and Well-beloved Counſellor *Francis* Lord *Verulam*, our Chancellor of *England*; Greeting.

Whereas Sir *Walter Raleigh*, Knighte, late of the Pariſhe of Saint *Martyn* in the Feilds, in the County of *Middleſex*, with others, hath been indicted of divers High-Treaſons by him committed againſt Us, and thereupon hath been tryed, and found Guiltye of the ſame, before our deare Couſine and Counſellor, *Thomas* Earle of *Suffolke*, then Chamberlaine of Our Houſehold,

Gilbert late Earle of *Shrewſbury*,
Charles late Earle of *Devon*,
Henry Lord *Howard*,
Robert Lord *Cecill*, of *Eſſingdon*, then Our Principal Secretary,
Edward Lord *Wotton*, then Our Comptroller of oure Houſehold,

And other our Juſtices of Oier and Terminer, at our Citye of *Winchester*, in our Countye of *Southampton*, concerning Treaſons, and other Offences, lately aſſigned; which ſaid Sir *Walter Raleigh* was, for the ſame his Treaſons, by them adjudged to be drawn, hanged, and quartered, according to the Lawes and Cuſtomes of this our Realme of *England*, in that Caſe provided; which ſaid Commiſſion, with the ſaid Judgment, Indictment, and the Tryall and Proceedings thereupon, were retourned, and doe remayne in our ſaid Court of Pleas, before Us to be houlden; and although the ſaid Sir *Walter Raleigh* be adjudged to dye as aforeſaid; yet We, mynding to diſpence with that Manner of Execution of Judgment, doe therefore, by theis Preſents, pardon, remit, and releaſe the ſaid Sir *Walter Raleigh*, of and from ſuch Execution of his Judgment to be drawne, hanged, and quartered, as aboveſaid, and inſtead thereof, our Pleaſure is to have the Head only of the ſaid Sir *Walter Raleigh* cut off, at, or within our Palace of *Weſtminſter*, in, or upon ſome fitt and convenient Place, or Scaffold, to be provided in that Behaulf, and that in ſuch Sort, and Order, as in ſuch Caſes have been heretofore done; the ſaid Judgment to be drawne, hanged, and quartered, or any Lawe, or other Thing, or Matter whatſoever, to the contrary notwithſtanding: Willing, charging, and hereby expreſsly commanding you our ſaid Chancellor, That, uppon Receipt hereof, you do forthwith direct, under our Great Seale of *England*, Two ſeverall Writtes, one to the Lieutenante of our Tower of *London*, or his Deputy there, for the Delyvery of the ſaid *Walter Rawleigh* to the Sheriffe of *Middleſex*, at, or within our ſaid Palace of *Weſtminſter* aforeſaid; and another Writt to the ſaid Sheriff of *Middleſex*, for the receiving the ſaid Sir *Walter Raleigh* of and from the Handes of our ſaid Lieutenante, or his Deputye, and for the executing of him there, at ſome fitt and convenient Place, to be there, by our ſaid Sheriff, erected and provided for that Purpoſe, in ſuch Manner and Form as in ſuch Caſes hath heretofore bin done, or uſd to be done; and theis Preſents ſhall be your Warrant and Diſcharge for the ſame, againſt us, our Heirs and Succeſſors for ever.

Witneſs Our Self, at Weſtminſter, *the Eight-and-Twentieth Day of* October.

Per Breve de Privato Sigillo.

* People have often wondered how an old Sentence, that had lain dormant ſo long, could have been put in Execution; eſpecially, as Sir *Walter*, by the King's Patent, had Power of Life and Death over the King's Subjects: And as what is printed in Vol. I. pag. 219. is a very ſhort and imperfect Account of the Proceedings againſt that Great Man, before Sentence, we hope the Account which we have procured from authentick MSS. will be acceptable; together with the Warrant of his Execution, from *Rymer's Fœdera*.

NUMBER V.

The Argument of WILLIAM PRYNNE *of* Lincoln's-Inn, *Esq. (a)* Hill. 20 Car. I. Banc. Regis, *in the Case of the Lord* CONNOR MAGWIRE, *Baron of* Ineskellin *in* Ireland, (*the chief Contriver of the late* Irish *Rebellion and Massacre of the Protestant* English) *against whom he was assigned Counsel by both Houses of Parliament.*

The Case and Plea of the Lord *Magwire.*

CO*nnor Magwire*, by the Name of *Connor Magwire* of *London*, Esquire, was, in *Michaelmas Term* last, indicted in this Court *for several High Treasons committed by himself*, together with *Hugh Mac-Mahon* and divers *other Conspirators* and false *Traytors* against our Lord the King, within the Realm of *Ireland* in *partibus transmarinis*, on the 23d Day of *October*, 17 *Caroli*. Upon his Arraignment at this Bar, after Not Guilty pleaded, being demanded, How he would be tried? he put in this Special Plea, as to the particular Manner of his Trial only, under his Counsel's Hand.

That by the Statute of *Mag. Charta*, it is enacted, *That no Freeman ought to be imprisoned*, &c. *Nor will we pass upon him, but by the lawful Judgment of his Peers, or by the Law of the Land.* That after this, in a Parliament held at *Droghedah* in the Kingdom of *Ireland*, in the 10th Year of King *Henry* VII. it was enacted, *That all Statutes late made within the Realm of* England *concerning or belonging to the Common and Publique Weal of the same, from thenceforth should be deemed good and effectual in Law; and over that, be accepted, used, and executed within the Land of* Ireland *in all Points, and at all Times requisite, according to the Tenor and Effect of the same: And that by Authority aforesaid they and every of them be authorized, approved, and confirmed in the said Land of* Ireland: That before the Time of the supposed Treasons, King *Charles*, by his Letters Patents under the Great Seal of *Ireland*, bearing Date the last Day of *August*, in the 4th Year of his Reign, at *Dublin* in *Ireland*, did create *Brian Magwire*, Father of the said *Connor Magwire*, Baron of *Iniskellen* in the County of *Farmanagh* in the said Realm; and granted *to him and the Heirs Males of his Body, the Title, Honor, and Dignity of the said Barony, and to have a Place and Voice among the Peers and Nobles of* Ireland *in the Parliaments of that Realm:* By virtue whereof the said *Brian* was seised in his Demesne as of Fee Tail of the said Barony, and dyed seised thereof at *Dublin*, 1 *Feb.* 12 *Caroli*, before the supposed Treasons; after whose Death the said Barony descended to him as Heir in Tail: That by virtue of these Letters Patents, before the said supposed *Treasons committed*, he was one of the *Barons, Lords*, and *Peers of Parliament in the Realm of* Ireland; and at the *Parliament begun and held there the 16th Day of* March, 16 Car. *at* Dublin, and continued until the 17th of *August* then next following, and then adjourned till the 9th of *November* next ensuing, and thence prorogued to the 24th *of* February *next following, and from thence continued till the 24th of* June, 17 Car. *he was present as one of the Peers of the Realm of* Ireland. And further saith, That on the 23d of *October*, 17 *Car.* he was taken and arrested by certain Persons to him unknown at *Dublin*, in *Ireland*, and there committed to safe Custody for the Treasons pretended to be committed by him, till afterwards he was, on the 12th of *June*, 18 *Car.* by certain Persons to him unknown, brought in safe Custody, against his Will, to *Westminster* within the Realm of *England*, and then and there committed to the *Tower* of *London*, where he is yet detained. And therefore prayeth, That he *may be tried and judged by his Peers of the Realm of* Ireland, *for the supposed Treasons in the Indictment.* To this Plea of his Mr. *Aske*, the King's Attorney in this Court, hath demurred in Law, and the Prisoner hath joined in Demurrer: And Whether *this Plea* of the Prisoner, as *to his Trial by his Peers of the Realm of* Ireland, *be good in Law?* is the sole Question to be now argued.

This Case is of very great Concernment, and yet of greater Expectation: It concerns the whole Peerage of *Ireland* in some Respects, on the one Hand; and on the other, the Justice both of the King, Parliament, and Kingdom of *England*, in bringing a desperate Rebel and Arch-Traytor to condign Punishment, for the most horrid, bloody Treason against the King's Royal Crown and Authority, the Protestant Religion, and the whole *English* Nation inhabiting *Ireland* (devoted to Destruction by this Traytor and his Confederates), that ever was plotted or executed under the Sun. The Eyes of all our Three Kingdomes (highly concerned in, and deeply suffering by, this Treason), but more especially the Eyes and Hearts of our adjoyning vigilant Parliament (which hath especially recommended it to this Court, and assigned myself, among others, Counsel in this Case), are intentively fixed upon the final Result and Issue of it. I wish my Vacancy to study and Abilitie to argue this publique Cause, had been such as might have satisfied Expectation, and discharged the Trust reposed in me; but other publick Services having much interrupted me therein, I shall begin to argue it for the present with the best Skill I may, and so leave it to those learned Gentlemen of the Law (if there shall be need of any further Arguments) who are provided to argue after me, to supply what is defective in this my proemial Argument.

All Matters of Fact and Form arising in this Plea have been already admitted true, and sufficiently pleaded in Law by mutual Consent, and nothing but the meer Matter in Law rests now to be debated, which I conceive to be but one short, single Point.

For though the Prisoner pleads, *That there was a Parliament, of which he was a Peer and Member, continuing in* Ireland *by Prorogation at the Time of his Apprehension and sending over into* England; yet this Privilege of Parliament comes no ways in Question as to the Point of his Trial, now only in Issue (as hath been falsly suggested to the Lords House, and intimated in an Ordinance of theirs since revoked), but relates only to his first Apprehension, which is not here in Controversie. Besides, he pleads not, That *this Parliament is yet continuing and actually sitting in* Ireland, *of which he ought to have (b) the Privilege*; but that it was continued till the 24th of *June*, 17 *Car.* which is three Years since, and so intended to be long since ended: Nor pleads he, That he ought to be, or to have been tryed for his Treason in *the Parliament of* Ireland, nor that his *Privilege of Parliament ought to extend to secure him from any Apprehension or Indictment for High Treason* (when the Treason is visible and real, as his is, and not imaginary only), in which Case *of Treason no Privilege of Parliament is to be admitted, as hath been resolved*, 8 H. VI. *rot. Parl. n.* 57. 31 H. VI. *rot. Parl. n.* 25, 26, 27. Cook's 4 *Instit. fo.* 25. So as the Matter of his Privilege of Parliament is quite out of Doors, and the sole Point in Issue is but this:

Whether *a Peer of* Ireland *committing High Treason in* Ireland, *for which he is there apprehended, and afterwards by Order of Parliament here brought thence into* England *against his Will, may be indicted and tryed for that Treason in this Court of* King's-Bench *by a Jury of* Middlesex *only, not by his Peers of* Ireland, *by virtue of the Statute of* 35 Hen. VIII. cap. 2.?

And under favour, I conceive in some Clearness affirmatively, That *he may and shall be tryed here by an ordinary Jury of* Middlesex, *and outed of his Peerage, by virtue of this Act.*

The Question arising meerly upon the Act itself, which is very short, I shall first recite it, and then draw my Arguments out of the very Intention, Words, and Bowels of it.

The Act of 35 *Hen.* VIII. *cap.* 2.

FOrasmuch as some Doubts and Questions have been moved, That certain kinds of Treasons, Misprisions, and Concealments of Treasons, done, perpetrated, or committed out of the Kings Majesties Realm of England, and other his Graces Dominions, cannot, ne may, by the Common Laws of this Realm, be enquired of, heard, and determined within this his said Realm of England; for a plain Remedy, Order, and Declaration therein to be had and made, be it enacted by Authority of this present Parliament, That all manner of Offences being already made or declared, or hereafter to be made or declared by any the Laws and Statutes of this Realm, to be Treasons, Misprisions of Treasons, or Concealments of Treasons, done, and perpetrated, or committed, or hereafter to be done, perpetrated, or committed, by any Person or Persons out of this Realm of England, shall be from henceforth inquired of, heard and determined, before the Kings Justices of his Bench, for Pleas to be holden before himself, by good and lawful Men of the same Shire where the said Bench shall sit and be kept; or else before such Commissioners, and in such Shire of the Realm, as shall be assigned by the Kings Majesties Commission, and by good and lawful Men of the same Shire, in like Manner and Form, to all Intents and Purpoles, as if such Treasons, Misprisions of Treasons, or Concealments of Treasons, had been done, perpetrated, and committed within the same Shire where they shall be so inquired of, heard, and determined, as is aforesaid.

Provided always, That if any the Peers of this Realm shall happen to be indicted of any such Treasons or other Offences aforesaid, by Authority of this Act, that then after such Indictment they shall have their Tryal by their Peers, in such like Manner and Form as hath been heretofore accustomed.

(a) I apprehend it neither unseasonable nor unprofitable to publish this *Argument at Law* concerning the *Trial of Irish Peers for foreign Treasons acted by them*, made by me near 14 Years past, in the *King's-Bench Court* at *Westminster*, in the Case of *Connor Magwire*, an *Irish* Baron, there indicted for High-Treason, in having a principal Hand in the late bloudy Rebellion in *Ireland*; against whom I was (by special Order) assigned Counsel, among others, by the Parliament then sitting; upon whose Plea, and a Demurrer thereunto, I first argued this new Point in Law, never formerly disputed, adjudged in open Court, *Whether an* Irish *Peer (or Commoner) committing Treason in* Ireland, *sent over from thence into* England *against his Will, might be lawfully tried for it in the* King's-Bench *at* Westminster *by a* Middlesex *Jury, and outed of his Tryal by* Irish *Peers of his Condition, by the Statute of* 35 H. VIII. c. 2.? After two solemn Arguments at the Bar, by myself and Serjeant *Rolls*, against, and Mr. *Hales* and Mr. *Twisden* for the Prisoner, and Mr. Justice *Bacon*'s Argument on the Bench, his Plea was over-ruled, adjudged against him; it being resolved, *he might and ought to be tried only by a Jury of* Middlesex, *not by his Peers of* Ireland: Whereupon he pleading *Not Guilty* to his Indictment, was tried by a Substantial Jury (to whom he took both his peremptory and legal Challenges, which the Court allowed him of right), and after a very fair and full Trial, was found Guilty by the Jury, upon most pregnant Evidence; and then condemned, and executed as a Traytor at *Tyburn*. *Prynne*'s *Preface* to his *Argument*, P. 1, 2.

This Argument should be read after Lord *Magwire*'s Plea in Vol. I. Page 929.

(b) See 3 *E.* IV. *c.* 1. in *Ireland.*

From this Act I shall deduce several Arguments and Conclusions to prove, that the Prisoner at the Bar, though a Peer of *Ireland*, shall be tried *by an ordinary Jury of* Middlesex *here*, not by *his Peers in or of* Ireland, for the Treasons committed in *Ireland*, whereof he stands here indicted:

For my more methodical proceeding, I shall divide the single Point in Controversie into these Three subordinate Questions:

I. *Whether this Statute extends to Treasons committed in* Ireland, *by* Irish *Commoners?*

II. *Whether it reacheth to Treasons in* Ireland *perpetrated by* Irish *Peers, as well as by* Irish *Commons?*

III. *Admit it extends to* Irish *Peers as well as Commoners, whether it doth not then inevitably out them of their Trials by* Irish *Peers, and subject both of them alike to a Trial at this Bar, by a* Middlesex *Jury?*

For the First, *Whether this Act extends to Treasons committed in* Ireland, *by* Irish *Commoners?* There is but little Doubt of it. For first, It is as clear as the Sun at Noon-Day, that this Act extends to *all Treasons done or perpetrated in* Ireland *by* Irish *Commoners*; for the main Scope and Intent of this Law being *to make all manner of Offences then made or declared, or hereafter to be made or declared to be Treasons, Misprisions of Treasons, or Concealments of Treasons, by any Laws or Statutes of this Realm, done, perpetrated or committed by any Person or Persons out of* England, *inquirable or triable within this Realm, without any Scruple or Difficulty, either in this Court, or before such Commissioners in such Shire of this Realm, as the King by his Commission shall assign* (the very Sum and Substance of this Act, as the expres's Letter thereof resolves), the Realm of *Ireland* being out of this Realm of *England*, and no Part thereof, and Treasons therein committed by Commoners, being *Treasons done and perpetrated out of this Realm of* England; (as is clear by 20 *H.* VI. f. 8. a. b. 19 *H.* VI. 53. b. 32 *H.* VI. 25. b. 2 *R.* III. f. 12. 1 *H.* VII. f. 3. *Plowden* 368. b. *Dyer*, f. 360. b. *Cook* 7 Report, f. 22, 23. *Calvin*'s Case, 1 *H.* V. c. 8. 4 *H.* V. c. 6. *Cook*'s Instit. p. 11. 18.) these Treasons must certainly and most necessarily be both within the Intent and Words of this Law, and so consequently triable in this Court by an ordinary Jury of *Middlesex*, without any Scruple or Difficulty: The rather because *Ireland*, though out of this Realm of *England*, is yet Part of the King's Dominions, and a subordinate Kingdom, united and annex'd to the Crown of *England*, govern'd by the Laws of *England*, and bound by Acts of Parliament made in *England* in many Cases, as is resolved, and undeniably evidenced by *Pat.* 6. *Johan.* m. 6. n. 17. *Rot. Pat.* 8 *Johan.* m. 1. *Clauſ.* 12 *H.* III. m. 8. *Pat.* 30 *H.* III. m. 3. 14 *H.* III. The Statute of *Ireland*, *Pat.* 5 *E.* III. *pars* 1. m. 25. 11 *E.* III. c. 2, 3, 4, 5. 27 *E.* III. c. 3, 18. 13 *E.* I. *Stat. de Mercat.* 1 *H.* V. c. 8. 4 *H.* V. c. 6. 1 *H.* VI. c. 3. 3 *H.* VII. c. 8. 1 *H.* VIII. c. 5. 32 *H.* VIII. c. 4. 35 *H.* VIII. c. 2. 32 *H.* VI. *Statutes of* Ireland, c. 1. 8 *E.* IV. *in* Ireland, c. 1. 10 *H.* VII. *in* Ireland, c. 4, 5, 22. 7 *H.* VIII. *in* Ireland, c. 1. 28 *H.* VIII. *in* Ireland, c. 2, 3, 5, 6, 7, 8, 13, 15, 18, 19. 33 *H.* VIII. *in* Ireland, c. 1. 1 *H.* VII. f. 3. *Kelway* f. 202. b. *Cook*'s 7 Rep. f. 22, 23. *Calvin*'s Case, 1 Instit. f. 141. b. 4 Instit. f. 349, 350, *&c.* 3 Instit. p. 18. Mr. *Saint John*'s *Argument at Law at* Strafford's *Attainder*, vide *Rushworth*'s *Strafford*'s *Trial*, p. 694. *et seq.* and therefore Treasons there committed are more apt and proper to be tried here within the Letter and Intention of this Law, than Treasons done in *France*, *Spain*, or any Parts else, out of the King's Dominions, where our Laws and Acts of Parliament are not obligatory.

II. This Statute (as I conceive) was principally made to punish Treasons, Misprisions of Treasons, and Concealments of Treasons in *Ireland*, where they were more frequently done and perpetrated, than in any or all Parts of the World out of this Realm of *England*, as our Histories and the *(a) Irish* Statutes record: And the horrid general Treason, Insurrection and Rebellion in *Ireland* (much like this for which the Prisoner is indicted), mention'd in the Statute of *Ireland*, 28 *H.* VIII. c. 1. but seven Years before this Act, with other frequent Treasons and Rebellions there, were, no Doubt, the chiefest Ground of making this new Law. And that which puts it out of all Dispute, is the Statute of 28 *H.* VIII. made in the Parliament at *Dublin* in *Ireland*, c. 7. which reciting the Statute of 26 *H.* VIII. c. 13. made in *England*, concerning Treasons, and enacting, (as this of 35 *H.* VIII.) "That if any of the King's Subjects, Denizens, or others, "do commit or practise out of the Limits of this Realm (of *England*) "in any outward Parts, any such Offences, which by this Act are made, "or heretofore have been made Treason, that then such Treason, "whatsoever it be, that shall so happen to be done or committed, shall "be enquired and presented, by the Oaths of Twelve good and lawful "Men, upon good and probable Evidence and Witness, in such Shire "and County of this Realm, before such Persons as it shall please the "King's Highness to appoint by Commission under his Great Seal, in like "Manner and Form as Treasons committed within this Realm have "been used to be enquired of and presented; and that then upon every "Indictment and Presentment founden and made of any such Treasons, "and certified into the *King's-Bench*, like Process, and other Circum-"stance shall be there had and sued against such Offenders, as if the same "Treasons so presented had been lawfully found to be done and committed "within the Limits of this Realm, *&c.*" adds this memorable Clause thereto, *Considering then this Statute made in the Realm of* England, *is most beneficial and expedient to have due Execution* within the King's Land and Dominion of Ireland, especially in respect of the high Rebellion here lately committed, *that the odible Infamy against the King and Queen in the same Act expressed, and other Offences, Abuses, and Abominations there mentioned,* principally have been promulged, pronounced, done and attempted within this said Land, *Be it therefore established, ordained, and enacted, by Authority of this Present Parliament, That the aforesaid Statute and Ordinance, and every Thing and Things therein contained, be established, confirmed, accepted, deemed, judged and taken for* a good and right Law within the King's Land and Dominion of Ireland, and to be as good, effectual, and of the same strength and quality, effect, force and vertue, to all intents and purposes within the said Land, as the same is or ought to be in the Realm of England; *and that the said Statute and Act made in* England, *and every thing therein contained,* shall have relation, and take effect within this Land of Ireland against all Offenders contrary to the Form thereof, &c. Now that Act of 26 *H.* VIII. c. 13. with this of 35 *H.* VIII. c. 2. being principally made and intended for the Treasons done and committed in *Ireland*, as this *Irish* Parliament resolves *in terminis*, and *being most beneficial and expedient for that Realm*; it would be very illegal, yea irrational, absurd, impolitick, and improvident, to exclude *Ireland* out of this Law, where Treasons were most frequent, most dangerous to our Kings and Realm, and to extend it only to other Places out of the Realm, where Treasons were seldom done or perpetrated, and nothing so perilous to the King and Realm of *England*, as Treasons, Rebellions in *Ireland* have usually been in former and later Ages.

III. It hath been adjudged by all the Judges of *England* both in *(b) Orourk*'s Case, 33 *Eliz.* and in Sir *John Perrot*'s Case, 24 *Eliz.* cited in *Calvin*'s Case, *Cook*'s 7 Report, f. 23. a. in his 1 *Institutes on Littleton*, f. 26. *b.* 3 *Institut.* p. 11, 24. and so it was agreed without any Argument in *Hugh Mac-Mahone*'s Case, this last *Michaelmas* Term (the Prisoner's Confederate in this horrid Treason), that Treason committed in *Ireland* itself by an *Irish* Commoner, is triable in this Court by this very Statute, (contrary to the subitane, extrajudicial Opinion of *Dyer*, *M.* 19 & 20 *Eliz.* fol. 360.) resolved since to be no Law: Seeing then it hath been thus frequently resolved heretofore, and in Case of the Treasons now in question this very last Term without any Scruple; *That an* Irish *Commoner committing Treason in* Ireland, *and brought over from thence hither against his Will, is triable in this Court by a* Middlesex *Jury*; there is no Doubt at all of the first Question, but that this Statute extends to Treasons committed in *Ireland* by *Irish* Commoners, and the Doubt (if there be any) will rest merely in the second Point, which I am already arrived at; namely,

Whether this Act extends to Treasons perpetrated in Ireland *by* Irish *Peers, as well as by* Irish *Commoners?* And under Correction, I conceive, with much Clearness, that it doth, for these ensuing Reasons.

1. From the Generality and Universality of the Act itself; wherein I shall observe a four-fold Universality, which supplies me with four undeniable Arguments, to prove *Irish* Peers within this Law, as well as *Irish* Commoners.

The first is a Universality of the Kinds of Offences specified in the Act, in these general Terms; All manner of Offences *being already made or declared, or hereafter to be made or declared by any the Laws or Statutes of this Realm, to be Treasons, Misprision of Treasons, or Concealment of Treasons, done or perpetrated out of this Realm of* England, *shall be enquired of by the King's Justices of his Bench*, &c. Now these general Words, All manner of Offences, &c. must necessarily extend to all manner of Treasons perpetrated or committed out of this Realm, by Peers as well as Commoners; to this Treasons of the Lord *Magwire*, as well as to the Treasons of *Mac-Mahone*, Esq. they being the self-same Treasons in Substance, and a manner of *Treasons specially made and declared by the Laws of this Realm*, since there are no restrictive Words to confine these general Clauses of Treasons only to Commoners, and no expres's Exception for the Offences or Treasons of *Irish* Peers to be found within the Statute; else there would be a Repugnance and Contradiction between the Text and the Glos's, and this general should be turned into a specifical in respect of the Traitors offending: Therefore this general Clause extending to all Treasons whatsoever done or perpetrated out of the Realm, must necessarily extend to the Treasons of all *Irish* Peers as well as Commons; and so both of them, by the Words and Intention of this Law, shall be triable in this Court.

The second is *a Universality of Time. All manner of Offences already made or declared, or hereafter to be made or declared, Treason*, &c. *done, perpetrated, or committed, or* hereafter to be done, perpetrated, or committed, *shall be enquired of by the King's Justices of his Bench*, &c. which extends to all former Treasons done out of the Realm at any Time before the making, and to all future Treasons since the passing of this Act: Now this Universality of Time extends as well to the Treasons of *Irish* Peers as Commoners, to the Treasons of Baron *Magwire* as well as of Mr. *Mac-Mahone*, both being alike Treasons committed after this Act.

The third is a *(c) Universality of Place: All manner of Treasons done, perpetrated, or committed* out of this Realm of England, that is, *in any Place whatsoever out of the Realm of* England, be it in *Ireland*, *Scotland*, *France*, *Spain*, *Germany*, *Italy*, *Barbary*, *Turkey*, the *East* or *West Indies*, as was resolved in Dr. *Story*'s Case, Hil. 13 Eliz. Dyer 298. b. 2 & 3 Phil. & Mar. Dyer 131, 132. Now this extends generally to all foreign Treasons committed by Peers as well as Commons, and so to the Treason of the Prisoner at the Bar, it being done in *Ireland*, out of this Realm of *England*, and so fully within the Act.

The 4th (which is fatal and unanswerable) is a Universality of Persons, coupled together with all the three former Generalities in these expres's Words: *All manner of Offences made Treason*, &c. *done, perpetrated, or committed* By any Person or Persons, *out of this Realm of* England, *shall be from henceforth enquired of, heard and determined before the King's Justices of his Bench*, &c. Now any Person or Persons being a universal Expression, equivalent *to all manner of Persons whatsoever collectively*, or, *to all and every Person whatsoever, distributively*, extends to *Irish* Peers, as well as Commoners, yea, to all Subjects, of all Ranks whatsoever, within the

(a) See the Statutes of *Ireland*, 3 *E.* II. c. 4. 18 *H.* VI. c. 2, 3. 25 *H.* VI. c. 4, 5. 28 *H.* VI. c. 1. 1 *E.* IV. c. 2. 5 *E.* IV. c. 6. 18 *E.* IV. c. 2. 10 *H.* VII. c. 6, 8, 9, 10, 13, 17, 19. 28 *H.* VIII. c. 1, 3, 9, 11. 3 *Phil. & Mar.* c. 11. 1 *Eliz.* c. 6, 17. 27 *Eliz.* c. 1. 28 *Eliz.* c. 8, 9. 11 *Jac.* c. 4. and the *Annals of* Ireland.

(b) See *Mr.* St. John's *Argument against the Earl of* Strafford, in *Rushworth*'s *Strafford*'s *Trial*, P. 694.

(c) See *Cook*'s 3 *Instit.* p. 34.

Compaſs of this Law, in regard of the manner of Trial, but ſuch only who are excepted out of it by ſpecial Proviſo. Now *Iriſh* Peers are none of thoſe Perſons excepted, as I ſhall prove anon.

That theſe Words, *any Perſon or Perſons*, extend to Peers as well as Commoners, where there is no Exception of Peers, is undeniable.

Firſt, Becauſe a Peer is a Perſon, though of a higher Rank or Degree than an ordinary Commoner, or Freeman, and one kind of Perſon in Law; therefore within theſe Words, *any Perſon or Perſons*.

Secondly, Becauſe general Laws, made for the common Good, Safety of the Realm, and Puniſhment of the grand Crime of High Treaſon, are like to God himſelf (*a*), no Reſpecters of Perſons, but bind and puniſh all alike. Therefore *any Perſon or Perſons*, in ſuch a publick Law as this, made for the common Good, Safety, and Puniſhment of the greateſt Treaſons, Evils, muſt neceſſarily include all Perſons, Subjects whatſoever, and except none, eſpecially the greateſt, whoſe Examples and Offences are commonly moſt dangerous and pernicious.

Thirdly, In all publick Acts whatſoever, theſe Words, *any Perſon or Perſons*, extend to Peers as well as Commoners; and I know no one Precedent to the contrary. To inſtance in ſome few Acts, inſtead of many: In the Statutes of 26 *H.* VIII. c. 13. and 5 and 6 *E.* VI. c. 11. concerning Treaſons, *Any Perſon or Perſons*, or any of the *King's Subjects, Denizen, or others, that ſhall commit or practiſe Treaſon out of the Limits of this Realm, in any outward Parts, extend to Peers as well as Commons*; therefore, in this Act of the ſame Nature. So in the Statutes of 1 *Ed.* VI. c. 1. 2 and 3 *E.* VI. c. 1. 5 and 6 *E.* VI. c. 1. and 1 *Eliz.* c. 2. *If any Perſon or Perſons ſhall deprave or revile the moſt bleſſed Sacraments, or the Book of the Common Prayer*, &c. In the Statute of 1 *Eliz.* cap. 1. and alſo of 5 *Eliz.* cap. 1. *If any Perſon or Perſons*, &c. *ſhall extoll*, &c. *the Power of the Biſhop of* Rome, *or of his See.* 13 Eliz. c. 1. *If any Perſon or Perſons ſhall bring in, or put in ure any Bull from the Biſhop of* Rome, Agnus Dei, *Pictures, Croſſes*, &c. In the Statute of 23 *Eliz.* c. 2. *If any Perſon or Perſons ſhall, with a malicious Intent, ſpeak any falſe or ſeditious News of the Queen*, &c. In 27 *Eliz.* c. 2. *If any Perſon or Perſons ſhall harbour or contribute any Money to the Maintenance of any Jeſuits, Prieſts*, &c. In all theſe Acts (to pretermit (*b*) many others), the Words, *any Perſon or Perſons*, extend to Peers as well as Commons, as is reſolved in the Bodies and Proviſoes of all theſe Acts: Yea, in the Statute of 25 *E.* III. c. 2. of Treaſons (though a moſt Penal Law), the Words are only, *If a Man do compaſs or imagine the Death of the King*; *If a Man do levy War againſt the King in his Realm*, &c. *If a Man counterfeit the King's Broad or Privy Seal, or his Money*, &c. Yet it hath been reſolved without Diſpute in all Times, and ſo agreed by Sir *Edward Cook*, *Inſtitute* 3. p. 4, 5. that this Word, *a Man*, extends to both Sexes alike, including Women as well as Men, Peers as well as Commoners, Lords as well as Peaſants; yea, all Ranks, Callings, Conditions of Men who are Subjects; and that this Word *Man*, in the ſingular Number only, extends to many Men, to any Number of Men committing any of theſe Treaſons jointly, as well as to a ſingle Man, or Traitor, becauſe it is a general Law, made for the Safety of the King's Perſon, and the Realm. Much more then muſt *any Perſon or Perſons*, in this Statute, being both in the ſingular and plural Number, and in common acceptation, a far more univerſal, general, and comprehenſive Expreſſion than this of *a Man*, in 25 *E.* III. c. 2. extend equally to all Sorts, Sects, and Degrees of Men, as well as it, and ſo to Peers as much as it, and to Peers as well as to Commons, as it doth in the Statutes of 25 *H.* VIII. c. 22. 26 *H.* VIII. c. 13. 27 *H.* VIII. c. 2. 33 *H.* VIII. c. 12. and 20. 5 *E.* VI. c. 11. 1 *Mar.* c. 6. and 2 *Phil. & Mar.* c. 9, 10, 11. 5 *Eliz.* c. 1. 13 *Eliz.* c. 2. 18 *Eliz.* c. 1. 23 *Eliz.* c. 1. 27 *Eliz.* c. 2. 3 *Jac.* c. 4. concerning Treaſons.

Secondly, My ſecond Argument to prove *Iriſh* Peers within this Statute, is, becauſe *Iriſh* Commons are within its Verge, even for Treaſons committed in *Ireland*, as hath been adjudged in the fore-cited Caſes of *Orourk*, Sir *John Perrot*, and *Mac-Mahone:* For Laws and Law-givers being no Reſpecters of Perſons, where the Offences be the ſame, and there being no Clauſe, Word, or Syllable in this Statute extending to *Iriſh* Commoners Treaſons, but which doth, may, and ought, by the ſelf-ſame Juſtice, Reaſon, and Equity, to extend to the Treaſons of *Iriſh* Peers, (this Statute making no Diſtinction between the one and the other) and the Commons of *Ireland* having as abſolute a Right and Inheritance in their native Privilege of being tried by their Peers in *Ireland* (which yet is taken away by this Act in Caſe of Treaſon), as the Peers in *Ireland* have in their Peerage (to be tried there by their *Iriſh* Peers): We muſt not, yea, we cannot, in Point of Juſtice, diſtinguiſh between the one and the other, where the Law itſelf makes no Diſtinction: Therefore, ſince the *Iriſh* Commoner is undoubtedly within the Words and Scope of this Act, to be tried at this Bar by a *Middleſex* Jury, the *Iriſh* Peer (unleſs we will judge with Reſpect of Perſons, and coin a Diſtinction not warranted by this Act) muſt be alſo tried in the ſelf-ſame Manner. The Law is the ſame, the Crime is the ſame, both in *Magwire*'s and in *Mac-Mahone*'s Caſes; therefore the Trial, and Judgment too, muſt, in Law and Reaſon, be the ſame in both.

Thirdly, It will be granted me, without Diſpute, That if an *Iriſh* Peer commit Treaſon in any Foreign Parts, out of *England* and *Ireland*, as in *Spain*, *France*, *Flanders*, *Italy* or *Germany*, he ſhall be tried in this Court by an ordinary Jury, if Freeholders, and not by his Peers in *Ireland*, by vertue of this Act. Nay, if he commit Treaſon in *Ireland*, and fly into *England*, he may, and ſhall be tried for that very Treaſon, by an ordinary Jury, at this Bar (*c*); becauſe by flying his Country, and a legal Trial there, he hath outed himſelf of the Benefit of his Peers. Therefore it extends to *Iriſh* Peers, even for Treaſons done in *Ireland*, elſe they could not be triable here in any of theſe Caſes, which are granted on all Hands to be Law.

Fourthly, It is evident by the Proviſo in this Act, that *Engliſh* Peers committing any manner of Treaſons out of this Realm, are triable for it in *England*, by vertue of this Law, as well as *Engliſh* Commoners, though they were not ſo by the Common Law. Therefore *Iriſh* Peers committing Treaſons ſhall be within it likewiſe, and ſo triable here as well as *Iriſh* Commons, elſe they ſhould be in far better Condition than *Engliſh* or *Scotiſh* Peers, and quite exempted out of this Act. Now the ſame Words that bring *Engliſh* Peers within this Law, muſt of Neceſſity hook in *Iriſh* Peers too, there being no Clauſe which exempts or includes the one more than the other.

Fifthly, The very Letter, Intent, and Scope of this Act (as appears by the Body of it, and likewiſe by the Statutes of 26 *H.* VIII. c. 13. and 5 and 6 *E.* VI. c. 11. to the ſame Effect) was, to make all Treaſons done or committed out of *England*, by any Perſon or Perſons whatſoever, triable in *England*, either before the Juſtices in this Court, or (*d*) before ſpecial Commiſſioners in ſome other Counties; but to be ſtill triable within this Realm, as the Words (*All manner of Treaſons hereafter to be done, perpetrated, or committed by any Perſon or Perſons out of the Realm of* England, *ſhall be* from henceforth *enquired of, heard, and determined before the King's Juſtices of his Bench*, &c.) clearly reſolve in direct Terms: Therefore to make the Treaſons of *Iriſh* Peers committed in *Ireland*, or elſewhere, triable here in *England*, as well as the Treaſons of *Engliſh* Peers, or *Iriſh* Commoners. And to ſend them back into *Ireland*, to be there tried by their Peers, when once they are here in Priſon, and indicted in this Court, by exempting them out of this Act, contrary to the very Letter and Intent of the Law, is to run Point-blank againſt the very Words and Meaning of this Law, and the Law-makers: Therefore he muſt, by this Act, be tried at this Bar, and that by an ordinary Jury only, as I ſhall prove anon.

Sixthly, The very Scope and ſole Purport of this Act is not to make new Treaſons, or Traitors, which were none before, but to bring real Traitors only, for Treaſons formerly made, or hereafter to be made and declared Treaſons by the Laws and Statutes of this Realm, to exemplary Puniſhment in this Kingdom, for the Peace and Preſervation of the King, Realm, and the better Execution of Juſtice (the very Life of Laws) upon Delinquents only of the higheſt Rank, for the moſt tranſcendent Crimes of High Treaſons, or Miſpriſion, or Concealments of Treaſons, not for Felonies, or Petit Treaſons; which Conſideration muſt neceſſarily induce us, for the common Good, to give it the largeſt, fulleſt, and moſt equitable Conſtruction that may be. Thus the Judges, in former Times, have always interpreted it, as appears by *Dyer*, f. 132, 298. *Cook*'s 7 *Rep. Calvin*'s *Caſe*, f. 23. *a.* his firſt Inſtitut. on *Littleton*, f. 26. his third Inſtitut. p. 24. and in *Orourk*'s Caſe, wherein the Judges reſolved, Firſt, That the Statute of 1 *Mar.* Seſſ. 1. repealing all former Treaſons, but thoſe within 25 *E.* III. and of 1 and 2 *Phil.* and *Mar.* c. 10. enacting, *That all Trials hereafter to be had for any Treaſon, ſhall be had and uſed only according to the due Courſe of the Common Law of this Realm, and not otherwiſe*, extends not to the taking away of foreign Treaſons, or their Trials, by this Law. And in *Orourk*'s Caſe, they extended it by Equity beyond, and in ſome ſort, againſt the Letter of the Law itſelf; for he ſtanding mute, and refuſing his Trial, was thereupon condemn'd and executed for a Treaſon committed by him in *Ireland*, though the Words of the Statute are, *The Treaſon ſhall be enquired of, heard, and determined before the Juſtices of the King's-Bench, by good and lawful Men of the ſame Shire, where the ſaid Bench ſhall ſit*; and the Act ſpeaks nothing at all of ſtanding mute. But this being a publick Law for the common Good, to bring Traitors only to their Trial and juſt Puniſhment, his Refuſal to put himſelf upon his Trial, was adjudged to be a Determination and Conviction of his Treaſons within the Act; elſe any Traitor, by ſtanding mute, might evade and fruſtrate this good Law. If then this Statute may thus be conſtrued by Equity, and dilated beyond the Words, to one who ſtands mute, for a Treaſon done in *Ireland*; much more may it be extended to a Treaſon by an *Iriſh* Peer, who is fully within the Words and Intent of it, as I have already manifeſted: And it would be a moſt pernicious Gloſs which ſhould either elude or nullify this beneficial publick Law.

Seventhly, It is clearly reſolved in and by our Parliaments, 13 *E.* I. Proem. 13 *E.* I. of Statute Merchants, 21 *E.* III. Rot. Parl. n. 67. in the Statute of 5 *H.* V. ch. 6. and in divers of our Law Books, (*e*) *That Acts of Parliament made in* England, *wherein* Ireland *is either ſpecially named, or generally and neceſſarily included, do bind thoſe in* Ireland, *both Commoners or Peers alike.* This therefore being ſuch a Law, extending and binding thoſe in *Ireland*, as hath been reſolved in the fore-cited Caſes, it muſt certainly bind both the Peers and Commons of *Ireland* to a Trial at this Bar, for Treaſons done in *Ireland*, when the King and Kingdom deem it neceſſary or expedient to try them here in *England*.

Eighthly, The Proviſo in this Act for Trial of Treaſons done out of this Realm, by Peers within the ſame, extends only in poſitive Terms to Peers of this Realm of *England*, becauſe they only are Peers within *England*, and ſo only triable by their Peers, for foreign Treaſons within the ſame; not to Peers of *Ireland*, who are no Peers at all, nor triable by their Peers within this Realm of *England*; therefore this Proviſo extending only to Peers of this Realm, excludes all other foreign Peers, whether *Iriſh* or *Scots*, from any Trial by their Peers in *England*, for Treaſons acted out of it.

Ninthly, There is very great Reaſon why natural *Iriſh* Peers and Barons ſhould be within the Compaſs of this Law as well as Commoners, and rather they than any other foreign Peers; becauſe, as our (*f*) Hiſtorians, the *Iriſh* Annals, Statutes, and our Records do teſtify, ever ſince their Conqueſt by King *Henry* the Second, and Submiſſion to the Kings of *England*, they have frequently (almoſt every Year) in moſt Kings

(*a*) *Acts* x. 3, 4. *Rom.* ii. 11. *Eph.* vi. 9. *Col.* iii. 25. 1 *Pet.* i. 17.
(*b*) See 25 *H.* VIII. c. 3, 10, 13. 26 *H.* VIII. c. 2. 32 *H.* VIII. c. 4, 7, 9, 13. 5 *Eliz.* c. 9, 14, 15, 21, 22, 23. 8 *Eliz.* c. 2, 3, 4. 13 *Eliz.* c. 8. 13, 14 *Eliz.* c. 3. 1 and 2 *Phil.* and *Mar.* c. 3. 1 *Eliz.* c. 6.
(*c*) See *Cook*'s 3 Inſtit. p. 31.
(*d*) See 26 *H.* VIII. c. 13. 1 *E.* VI. c. 11.
(*e*) 1 *H.* VII. *Co.* 7. Rep. *Calvin*'s Caſe, f. 16, 17, 23. *Cook*'s *Inſtit.* 1. p. 33. *Mr.* St. John's *Argument at Law, at* Strafford's *Attainder*, in *Ruſhworth*, Vol. VIII. p. 698.
(*f*) *Mat. Paris, An.* 1230. Mr. *Camden*'s *Ireland*, p. 114, to 140. The *Annals of* Ireland, in Mr. *Cam. Britan.* p. 154, 156, 157, 158, 159, 160, 162, 163, 164, 165, 166, 167, 168, 169, 170 to 201.

Reigns,

Reigns, broken forth into private, petit, or general Rebellions and Insurrections againſt the *Engliſh*, (as I could inſtance in ſundry Particulars) in which Rebellions I commonly find a *Magwire*, a *Mac-Mahon*, and *Oneal*, in the Van, as Ring-leaders of all the reſt, as they were in this laſt Rebellion, wherein moſt of the native *Iriſh* Peers and greateſt Septs, have been deeply engaged, as principal Conſpirators. Among other Rebellions I find in Story, and (which is more authentick) in the expreſs Statute made in the Parliament at *Dublin* in *Ireland*, *Anno* 28 *H.* VIII. c. 1. *(a)* (but ſeven Years before this Law;) That *Gerald Fitz-Gerald*, Earl of *Kyldare*, the Earl of *Deſmond*, with divers others of the *Iriſh* Peers and Gentry, conſpiring together to extirpate the *Engliſh*, and deprive the King of his Sovereignty in *Ireland*, did ſend to the *French* King, the Emperor, and Biſhop of *Rome*, for Aid and Aſſiſtance for taking the ſame Land out of the King's and *Engliſh* Poſſeſſions; and thereupon, with Banners diſplay'd, and great Forces, traitorouſly invaded the King's Dominions there, beſieged the City and Caſtle of *Dublin*, murder'd the King's good Subjects, who withſtood them, and reſiſted the King's Forces ſent from hence, *&c.* for which they were all, by this Act, attainted of High Treaſon. The like general Rebellions have there broke forth ſundry Times, both before and ſince that Act, but none ſo generally, dangerouſly, and bloodily, as this for which the Priſoner at the Bar ſtands indicted. The Treaſons therefore, in *Ireland*, being commonly ſo frequent, ſo general, wherein moſt of the native *Iriſh* Peers (and ſome of the *Engliſh* Extraction too) were uſually chief Actors; there was very great Reaſon, Policy, and Juſtice too, why ſuch a Law as this ſhould be made to reach to *Ireland*; and why, in ſuch Caſes as theſe, (Rebellions there being ſo univerſal, and moſt of the *Iriſh* Nobility Conſpirators and Parties in them) that theſe Peers, and the chiefeſt Conſpirators, when ſurprized, ſhould be preſently ſent over from thence into *England*, and tried there for their Treaſons.

Firſt, To ſecure their Perſons from Eſcapes and Reſcues, which might be there more eaſily procured, eſpecially when and where the *Iriſh* Rebels are Maſters of the Field; as the Statute of 17 *H.* VII. in *Ireland*, c. 14. reſolves.

Secondly, To avoid a *(b)* Failure of Juſtice there, when by reaſon of the many *Iriſh* Peers there out in actual Rebellion, or by means of Alliance of moſt other Peers to them, or of the Flight of others thence, or the Employment of them in Service, or Places of Truſt, or by reaſon of the Interpoſition of the Rebels Forces between them and the Place of their Trial there, a competent Number of indifferent *Iriſh* Peers, for a ſpeedy Trial, cannot be aſſembled with Safety or Conveniency in *Ireland*, to try a rebellious Traitor by his Peers there; which obvious Defects are all ſupply'd by this Act.

Thirdly, To prevent all Partiality and Injuſtice in ſuch Caſes, which might happen in Trials by Peers in *Ireland*, either by Conſanguinity, or Alliance of the Peer to be tried to the *Iriſh* Peers who are to try him, or by Confederacy of the Triers in the ſame Treaſon with the Party tried; or through Fear of Miſchief or Revenge upon the Triers, Jury, Witneſſes, and Judges, by the tried Rebel's Friends, Kindred, and Confederates, in caſe he ſhould be condemn'd by them, and executed (none being ſo vindictive and bloody in this kind as the *Iriſh*). Upon all which weighty Reaſons, there was a ſpecial Cauſe, why, both in Juſtice, Policy, and Prudence, all *Iriſh* Peers, who by publick Rebellion commit High Treaſon in *Ireland*, ſhould be ſent over and tried here by ordinary Juries, to prevent the forenamed Miſchiefs and Failure of Juſtice, and bring them to condign Puniſhment. Now in this Caſe here in Judgment at the Bar, all theſe recited Reaſons hold: For, Firſt, Moſt of the *Iriſh* Peers were in actual Rebellion when the Priſoner was ſent over; moſt of the *Engliſh* and Proteſtant *Iriſh* Peers there, either murder'd, or forced to fly thence, or ſo diſperſed and employ'd, that they could not aſſemble a competent Number of indifferent Peers to any Place, with Conveniency, to try him in *Ireland*. Secondly, The Enemies, and *Iriſh* Rebels, were then Maſters of the Field in moſt Places, the Priſoner in Danger to be reſcued by Force from them, or by Treachery likely for to eſcape out of their Hands, and the Times ſo troubleſome, as would admit no Leiſure for ſuch a Trial. Thirdly, Moſt of the *Iriſh* were ally'd to *Magwire*, or engaged with him in the ſelf-ſame Treaſon and Rebellion; and ſo neither in Law, Juſtice, or Prudence, fit or indifferent Perſons to paſs upon his Trial in this Caſe of moſt publick Concernment. Fourthly, The Judges, Witneſſes, and Peers, that ſhould try him there, would have been in extreme Peril of their Lives, and of exemplary publick Revenges from their Confederate Rebels, who threaten'd Revenge, as appears by *Mac-Mahon*'s Speech (*Magwire*'s Confederate) to the Juſtices upon his firſt Examination: *I am now* (ſaid he) *in your Hands, and you may do with me what you pleaſe:* But I am ſure within few Days I ſhall be revenged; and by like Words of Revenge uſed by *Owen Oneil* in *Flanders*, ſo ſoon as he heard *Magwire* was apprehended. Fifthly, If he ſhould now be ſent back from hence into *Ireland*, to be tried, the Rebels, and his Party, are there ſo predominant, that ſcarce any Witneſſes, nor Peers, nor Judges either, would or durſt there to appear openly againſt him; or elſe ſuch Means would be made to delay or elude his Trial and Execution, that by ſome Device or other, there would, queſtionleſs, be a Failure of Juſtice againſt him. Therefore, for all theſe weighty Reaſons, he may, and ought, by all Rules of Policy, Equity, and Juſtice, to be arraign'd and tried only at this Bar, by vertue of this Act, which ſo clearly extends unto him; *That ſo the Blood of (c) above One Hundred and Fifty Thouſand innocent Proteſtants, ſhed in* Ireland, *in leſs than four Months Space, by means of this Rebellion*, which cries aloud to Heaven and Earth for Revenge againſt this great Contriver and Arch-promoter of it, may not go unrevenged in a way of publick Juſtice, to our eternal Infamy. I have quite done with the ſecond and main Queſtion, and proved an *Iriſh* Peer to be within the Statute, as well as an *Iriſh* Commoner.

I ſhall now proceed to the laſt Point, ariſing from the Manner of this Plea, that he may be tried by his Peers, not expreſſing where or how, and intimating that he would be ſo tried here in *England*. It is briefly this: *Admitting an* Iriſh *Peer to be triable in* England *for a Treaſon committed by him in* Ireland, *whether this doth not inevitably out him of his Trial by* Iriſh *Peers, and ſubject him to a Trial at this Bar by an ordinary Jury, as well as an* Iriſh *Commoner? And I conceive without any Scruple, affirmatively, that it doth, for theſe undeniable Reaſons:*

1. Becauſe *Iriſh* Peers are Peers only in *Ireland*, not in *England*; and ceaſe to be ſuch in Judgment of Law ſo ſoon as ever they arrive in *England*, both perſonally in themſelves, and relatively to others, being here in Judgment but mere Eſquires, not Lords, and are to be ſued as ſuch, not as Lords or Peers, even as Peers of *Scotland*, *France*, or *Spain* are, as is reſolved and adjudged 11 *E.* III. *Fitzh. N. Br.* 473. 8 *R.* II. *Proceſs*, *Fitzh.* 224. 20 *E.* IV. 6. *Brook*, *Noſme de Dignity*, 49 *M.* 19 & 20 *Eliz. Dyer* 360. *b. Cook*'s 7 *Rep. f.* 15, 16. *Calvin*'s *Caſe*, *Co.* 9 *Rep. f.* 117. the Lord *Sanquhar*'s *Caſe in Point*, and *Cook*'s 3 *Inſtit. p.* 30. The Priſoner then being no Peer in *England*, it is impoſſible that he ſhould be tried in *England* by his Peers.

2. Becauſe no ſuch Way of Trial was ever yet heard of in any Age, of any *Iriſh* or other foreign Peer, tried here in *England*, either by *Engliſh* Peers, or by his *Iriſh* or foreign Peers; therefore ſuch a Trial ſhall not, nor can be had or admitted now.

3. Becauſe neither the King's Bench, nor the Commiſſioners before whom the Statute limits theſe foreign Treaſons to be tried, nor yet the High Steward of *England* (if any ſuch ſhould be created) have any Power or Juriſdiction to ſummon a Jury of Peers out of *Ireland* to appear before them here in *England* upon ſuch a Trial as this; neither are the Peers of *Ireland* bound by any Law to appear or attend as Peers on any ſuch Service or Trial here, being Peers, and bound to ſerve as Peers (which their Patents expreſs) only in *Ireland*, and no Peers here: Therefore a Trial by his *Iriſh* Peers here in *England*, is an Impoſſibility, as well as an Illegality.

4. Admit a Jury of Peers might be ſummoned and ſent from thence, yet it would be a great Delay of Juſtice, it requiring a long Time to procure a full Appearance of Peers thence; yea, a betraying of *Ireland* to the Rebels at this inſtant, to ſend for ſo many Proteſtant indifferent Peers now from thence as might ſerve to try him here. Moreover, it would be an infinite Expence, Charge, Trouble, beſides the Danger by Sea, to ſummon a Jury of Peers from thence; and if they failed to appear in *England* upon Summons, as is probable they would, and lawfully might, they being not bound to it by any Law, and ſo no Fine certain to be ſet upon them for not appearing, nor legal Means of Coercion to compel them to come over upon ſuch a Trial, there ſhould be a Failure of Juſtice for want of ſuch a Peerage: And therefore no ſuch Trial may or can be expected, which would elude and null this Law.

5. This Statute directs the Trial of foreign Treaſons in expreſs Terms, to *be before the Judges in the King's-Bench, or the Commiſſioners appointed by the King in any County of this Realm.* Now no Trial by *Engliſh* or *Iriſh* Peers was ever heard of either in the King's-Bench, or before ſuch Commiſſioners; but it always hath been, and ought to be, either in the Houſe of *Peers in Parliament*, or *before the Lord High Steward* of England, as all former Precedents accord; and 15 *E.* III. *c.* 2. 1 *H.* IV. 1. 10 *E.* IV. 6. b. 13 *H.* VIII. 12. *Brook Treaſon*, 29. 33. *Cook*'s 3 *Inſtitute*, *c.* 1. & 2. *p.* 28, 29, 30. 4 *E.* III. *rot. Parl. n.* 1. 50 *E.* III. *rot. Parl. n.* 21 to 31. 34. 7 *R.* II. *n.* 15 to 24. 10 *R.* II. *n.* 6 to 18. 11. *n.* 2. *n.* 6. 7. 14 *R.* II. *n.* 14. 21 *R.* II. *n.* 12 to 17. & *Placita Coronæ coram Dom. Rege in Parl. n.* 1 to 20. 1 *H.* IV. *Plac. Coronæ in Parl. n.* 1 to 11. *Walſingham Hiſt. Ang. p.* 402. 2 *H.* IV. *n.* 30, 31. 5 *H.* IV. *rot. Parl. n.* 12. reſolve. Therefore no Trial can be in this Caſe by Peers, either in this Court, or before Commiſſioners, by virtue of this Act, or any other Law.

6. This Statute is introductive of a new Way of trying foreign Treaſons, done out of this Realm, by a Jury within *England*; which by the Rules of the Common Law could neither inquire nor take notice of any Treaſons or Matters committed, perpetrated, or acted beyond the Seas, is evident by the Prologue of this Act, the Statutes of 26 *H.* VIII. *c.* 13. 5 *E.* VI. *c.* 11. *M.* 2 & 3 *E.* I. *Coram Rege Rot.* 56. *Hereford. M.* 2 *E.* II. *Fitzh. Obligation* 15. & *Utlagary* 18. *Tr.* 8 *E.* II. *Fitzh. Teſtament.* 16. 6 *E.* III. *f.* 17, 18. 27 *Aſſ.* 43. 41 *E.* III. 19. 48 *E.* III. 2, 3. 20 *H.* VI. 28. 44. 15 *E.* IV. 14, 15. 20 *E.* IV. *Perkins*, *Sect.* 121. 494. 737. *Cook* 4 *Inſtit. c.* 17. 1. *Inſtit. f.* 74. *Stamford l.* 2. *c.* 14. *Cook* 2 *Rep.* 49. *a. Long & Pecock*'s *Caſe*, 5 *Rep. f.* 107. *a.* 3 *Inſtit. f.* 48, 49. Whereupon it altering the Common Law in this Particular, it *outs all former Doubts*, and moſt punctually preſcribes all the Particulars and Appurtenances belonging to the Trial of them, from which there neither may nor can be any Variation by Law.

Firſt, it appoints the Place where they ſhall be tried.

1. *In general, within this Realm of* England.

2. *In particular, either in the* King's-Bench, *wherever it ſits, or in ſuch County as the King by his Commiſſioners ſhall aſſign.* 2. The Judges before whom the Trial ſhall be are thus particularly deſcribed, *The Juſtices of the* King's-Bench, *or ſuch Commiſſioners as the King ſhall appoint under the Great Seal.*

3. The Jurymen by whom they ſhall be tried are thus defined *in Terminis* in the Act, *By good and lawful Men* (not Peers or Commons of *Ireland*) of the ſame Shire, *where the ſaid Bench of the King ſhall ſit, if the Trial ſhall be in the* King's-Bench; and *if before Commiſſioners aſſigned by the King in any ſhire of the Realm, then by the good and lawful Men of the* ſame Shire *where the Commiſſioners ſit; which is doubled* (like *Pharaoh*'s Dream) to make it more certain: And likewiſe preciſely enacted by the Statutes of 26 *H.* VIII. *c.* 13 & 5 & 6 *E.* VI. *c.* 11. in purſuance of this Act.

4. The Manner how the Trial ſhall be is thus punctually ſpecified; In ſuch Manner and Form, to all Intents and Purpoſes, *as if ſuch Treaſons*, &c. *had been done, perpetrated, and committed within the*

(a) See 1 *E.* III. rot. parl. n. 4, 5, 6. 6 *E.* III. n. 11. 6 *E.* III. Parl. 2. n. 3. 7 *R.* II. n. 4. 13 *R.* II. n. 2.
(b) Upon which Ground Writs of Error lie in the *King's-Bench* in *England*, to reverſe erroneous Judgments in the Courts and Parliaments of *Ireland*, *Cook*'s 4 *Inſt.* p. 352. *Mr.* St. John's *Argument at Law againſt* Strafford, in *Ruſhworth*'s *Collections*, Vol. VIII. p. 696, 698.
(c) Dr. *Jones*, and other printed Relations, concerning the *Iriſh* Rebellion.

ſame,

ſame (a) Shire where they ſhall be ſo inquired, heard, and determined, as is aforeſaid: Which laſt Words (with the very like in the Statutes of 26 *H.* VIII. *c.* 13. & 5 *E.* VI. *c.* 11. extending to our Caſe) put an End to the Point in Queſtion; for if the Lord *Magwire*, now at the Bar, had committed the Treaſons for which he is now indicted in *Weſtminſter*, there is no Doubt nor Scruple of it, but he ſhould have been tried by a Jury of *Middleſex*, notwithſtanding his Peerage in *Ireland*; and he could neither have pleaded nor demanded his Peerage, as is reſolved expreſly in *Calvin*'s Caſe, *C.* 7 *Rep. f.* 15, 16. and in the Lord *Sanquhar*'s Caſe, *Cook*'s 9 *Rep. f.* 117. who was tried and condemned by an ordinary Jury, for ſuborning *Carliel* to murther *Turner* with a Piſtol in *England*, though a Peer of *Scotland*, becauſe he was here no Peer; *and the forecited Books are expreſs, that the ſame Law holds in caſe of a Peer of* Ireland. Since then this Law expreſly enacts, *That the Trial of all foreign Treaſons ſhall be by good and lawful Men of the ſame Shire where the King's-Bench ſhall ſit, in ſuch Manner and Form,* to all Intents and Purpoſes, as if the ſame Treaſons *had been committed here in* Middleſex *where the King's-Bench ſits*; there neither may nor can be any other Form of Trial for the Priſoner, nor in any other Place, nor before any other Judges, nor by any other Jury, but ſuch as this Statute hath punctually defined, and that is by a Jury of *Middleſex*, to all Intents and Purpoſes, as if the Treaſons *for which the Priſoner ſtands indicted* had been plotted and executed in *Middleſex*. Therefore to admit him to a Trial by *Iriſh* Peers, and not by good and lawful Men of *Middleſex*, or to ſend the Priſoner back to *Ireland*, there to be tried by his Peers, is to run quite counter and point blank againſt this unanſwerable Clauſe of the Statute, *That he ſhall be tried by good and lawful Men of the ſame Shire where the King's-Bench ſits, to all Intents and Purpoſes as if the Treaſons had been there committed.* And had they been there committed actually, as they are legally by the expreſs Purview of this Law, it could never ſo much as be ſcrupled and made a *Quere*, Whether he ſhould be tried by his *Iriſh* Peers here, or ſent over to be tried in *Ireland* for Treaſons acted there, after an Indictment for them here found againſt him? In one Word, Statutes which preſcribe new Forms of Trial in ſuch a particular Way as this Act doth, are like Letters of Attorney, or Licenſes of Alienation (*b*), *they muſt be moſt ſtrictly purſued, and not varied from in the leaſt Punctilio*; as was reſolved by all the Judges of *England*, *Hil.* 21 *Jac.* in the Caſe of Penal Laws, *Co.* 7 *Rep. f.* 36, 37. Therefore no other Form of Trial ought to be admitted in this Caſe than what the Statute preſcribes, and that is only by *good and lawful Men of* Middleſex, not by *Iriſh* Peers.

7. The Proviſo in this Act puts a Period to this Caſe:

Provided always, That if any the Peers of this Realm ſhall happen to be indicted of any ſuch Treaſons, or other Offences aforeſaid, by Authority of this Act, that then after ſuch Endictment they ſhall have their Trial by their Peers, in ſuch like Manner as hath been heretofore accuſtomed.

From whence I ſhall obſerve theſe five Particulars:

1. That Treaſons committed by *Engliſh* Peers in foreign Parts are triable here in *England*, within the very Body and Purview of this Law. Therefore by the ſelf-ſame Reaſon, Law, and Juſtice, Treaſons committed out of this Realm in *Ireland*, even by *Iriſh* Peers, are triable in *England* by this Act, elſe *Iriſh* Peers ſhould be quite out of this Act, and in better Condition than *Engliſh* or any *Iriſh* Commoners, who are clearly adjudged within it.

2. That Trial by Peers is ſaved by this Proviſo only to the Peers of this Realm; which both in the Prologue and Body of this Act is expreſly ſtiled *This Realm of* England. But the Peers of *Ireland* are no (*c*) Peers at all of this Realm of *England*, as is reſolved in 11 *Ed.* III. *Brief* 473. 20 *E.* VI. 4. *Co.* 7 *Rep. f.* 15, 16. & 9 *Rep.* Lord *Sanquhar*'s Caſe, *f.* 117. *Co.* 3 *Inſt. p.* 30. & *Dyer f.* 360. *b.* Therefore no ways within the Compaſs, Words, or Reaſon of this Proviſo, but clearly ſecluded out of it, and ſo not triable by their Peers. And this Statute preſcribing a new Way of Trial for foreign Treaſons, not triable here by Peers before, had excluded all *Engliſh* Peers from Trial by their Peers, by the Body of the Law, as ſome conceive, had it not been ſaved to them by this ſpecial Proviſo: Therefore certainly *Iriſh* Peers, who are not provided for at all, and no Peers in *England*, muſt neceſſarily be excluded from their Peerage by it upon their Trial here.

3. The Reaſon why this Law doth ſave the Trial by Peers to Peers of this Realm only, and to no others (which, as ſome conceived, was not ſaved to them in Caſes of foreign Treaſons by the Statute of 26 *H.* VIII. *c.* 13. as appears by the Lord *Graye*'s Caſe hereafter cited), makes an End of the Caſe in Queſtion, becauſe Peers of the Realm of *England* are Peers in every Shire and County of *England*. Therefore by the Great Charter of *England*, and all other Acts confirming it, and the Common Law itſelf, they ought to be tried only by their Peers within all Counties and Places of *England:* But *Iriſh*, *Scotch*, and foreign Peers, are no Peers in any County of *England*, as the forecited Books reſolve. Now this Statute enacting all foreign Treaſons to be triable not in *Ireland*, or any other his Majeſty's Dominions, but in *England* only, it was neceſſary and convenient by this ſpecial Proviſo to ſave the Trial by Peers to all *Engliſh* Peers to be tried for foreign Treaſons only in *England*, according to (*d*) *Magna Charta* and the *Common Law*, being their Birth-right, becauſe they are actual Peers in all Places of *England*, and may have *Engliſh* Peers enough at Hand to try them without Delay upon all Occaſions. But *Iriſh* and other Peers being no Peers at all in *England*, and it being a Thing improper to try them by *Engliſh* Peers, being no real Peers to them, and a Thing impoſſible to try them here by *Iriſh*, or any other foreign Peers, for the Reaſons formerly alledged, and this Statute confining the Trials within it only to *England*, it had been a direct Contradiction and Abſurdity to provide, that theſe foreign Peers ſhould be tried here by their foreign Peers for Treaſons, and not by an ordinary Jury, becauſe they are neither Peers themſelves in *England*, nor others who ſhould come hither from *Ireland*, or other foreign Parts, who loſe their foreign Peerage as ſoon as they ſet Foot on *Engliſh* Ground, with relation unto *England*, where their Peerage preſently ceaſeth.

4. *The Statute is, That the Trial for ſuch Treaſons,* &c. *ſhall be in ſuch Manner and Form, to all Intents and Purpoſes, as if they had been committed in* England. Now if *Engliſh* Peers commit Treaſon in *England*, they ſhall, by the Statute of *Magna Charta*, *cap.* 29. (yea by King *John*'s Charter, and by the Common Law long before, as Sir *Edward Cook* proves in his Commentary upon it, and I have at large demonſtrated in my (*e*) *Plea for the Lords and Houſe of Peers*) be tried only by their Peers, and not by any ordinary Jury, by *Engliſh* but not *Iriſh* Peers, as I have formerly proved. Therefore the Ground of ſaving Trial by Peers to Peers of *England* by this Act, is an unanſwerable Argument to deny ſuch a Trial here to any Peers of *Ireland* by *Iriſh* or *Engliſh* Peers.

5. The laſt Words of this Proviſo determine the Caſe in Queſtion without more Diſpute: *Provided always, That if any Peers of this Realm happen to be indicted of any ſuch Treaſons aforeſaid by Authority of this Act, they ſhall have ſuch Trial by their Peers, in ſuch like Manner as hath* been heretofore accuſtomed. It being always the Cuſtom of *England* (*f*), *ſince* Magna Charta, *and long before, in Caſes of Treaſons at the King's Suit, to try all* Engliſh *Peers in* England *only by their Peers*, and ſuch a Privilege as (*g*) Sir *Edward Cook* holds, *they cannot wave if they would, as it was adjudged in the Lord* Dacre's *Caſe*, Paſ. 28 H. VIII. *and ſince in the Earl of* Caſtlehaven's *Caſe*, 7 Car. But on the other Side it is moſt certain, that it hath never been accuſtomed heretofore, that *Iriſh* or any other foreign Peers ſhould be tried for any Treaſons here committed by *Engliſh*, *Iriſh*, or any other foreign Country Peers within the Realm of *England*; nay, no one Precedent of this Kind was ever heard of; and it is an impoſſible Thing in Point of Law, as I have proved: Therefore no ſuch Trial by any Peers can be once thought of or imagined for the Priſoner or any other Peer of *Ireland*, within the Purview or Proviſo of this Act.

6. I ſhall add further, *ex abundanti*, to put this Caſe out of all Queſtion, that I have made ſome curſory Search into moſt of the *Iriſh* Annals, Hiſtories, Antiquities, Statutes, upon this Occaſion (and I ſhould have made a further Inquiſition had I enjoyed any vacant Hours to do it), yet I cannot find ſo much as one Precedent of any *Iriſh* Peer tried in *Ireland* for Treaſon, or any other Offence, by his Peers, before this Statute of 35 *H.* VIII. and I believe the Priſoner's Counſel cannot (as indeed they neither did nor could) produce one Example of ſuch a Trial there, by Peers, before this Law, nor any Act of Parliament in that Realm before this Statute concerning Treaſons, which provides, *That* Iriſh *Peers ſhall be tried by their Peers*, there being no ſuch Clauſe, or leaſt hint thereof, to be found in the Statutes of 18 *H.* VI. *c.* 2, 3. 10 *H.* VII. *c.* 13. 13 *H.* VIII. *c.* 1. 28 *H.* VIII. *c.* 1, 2, 7. which make ſundry Offences Treaſons, and extend to and mention *Iriſh* Lords and Rebels by Name, as well as Commons; all and every of theſe Acts leaving both the *Iriſh* Peers and Commoners to the ſelf-ſame Trial by a Jury. And ſince this Act I preſume they cannot produce above one Precedent (and that a very late one in caſe of Treaſon) where an *Iriſh* Peer was tried by his Peers, and it was the Caſe of the L. *Slane*, much about twenty Years ſince there tried and acquitted by his Peers in *Ireland*, as I am informed; before which Time *it was then confeſſed by the Judges there, they never heard or read of any one ſuch Trial uſed in* Ireland; and ſince it we have heard of no other Trial there by Peers to ſecond it, but only of one Noble Lord (the Lord of *Valentiæ*, Viſcount *Norris*) there extrajudicially condemned by mere Martial Law in a Council of War, even in Times of Peace, by the Earl of *Strafford*, *Ann. Dom.* 1635, but not executed, nor tried by his Peers in a legal Way; all their Peers formerly being there either attainted by Act of Parliament, as is evident by the *Iriſh* Statutes of 28 *H.* VIII. *c.* 1. 3 & 4 *Ph.* & *M. c.* 2. 11 *El. c.* 1. 13 *El. c.* 6, 7. 27 *Eliz. c.* 1. 28 *Eliz. c.* 8, 9. 11 *Jac. c.* 4. 2 *H.* VI. *rot. Parl. n.* 8. or executed by Martial Law, as ſoon as apprehended in the Wars, or elſe ſlain in actual Rebellion, or pardoned upon their Submiſſions, without any Trial for their Treaſons by their Peers.

For Attainders of *Iriſh* Peers, and other Traitors and Rebels by Act of Parliament in *Ireland*, I find the Earl of *Kildare*, with others, attainted for a Treaſon and Rebellion (much like this for which the Priſoner ſtands here indicted) in a Parliament held at *Dublin* in *Ireland*, 28 *H.* VIII. *c.* 1. Since this, in 11 *Eliz. c.* 1. *Shan O Neale*, a bloody deſperate Rebel, was attainted by Parliament after his Death, (being hewn in Pieces by the *Scots*) and the Name of *O Neale* extinguiſhed, it being made High-Treaſon for any to aſſume that Name; and I find a *Mac-Mahon* and *Magwire* forfeiting Land among other Rebels in that Act; which largely ſets forth the Queen's Title to *Ireland*. 27 *Eliz. c.* 1. *James Euſtace*, Viſcount of *Baltinglas*, was attainted of High-Treaſon for a publick Rebellion againſt the Queen. 28 *Eliz. c.* 9. I find *John Brown*, and near one hundred more *Iriſhmen*, by Name attainted of High-Treaſon by this Act for an open Rebellion. In 11 & 12 *Jac. c.* 4. I find *Hugh* Earl of *Tyrone*, *Jury* Earl of *Tirconnell*, *Caconaugh Magwire*, *Mac-Mahon*, and above twenty more chief *Iriſh* Gentlemen, attainted of High-Treaſon by this Act, for their open Rebellions. But for a Trial of any *Iriſh* Peer for any Treaſon in *Ireland* by his Peers, I can meet with no Precedent as yet, but that of the Lord *Slane* only, and ſhall be glad to be informed of any other to parallel it.

Indeed in the printed Statute of 2 *Eliz. c.* 1. made in *Ireland*, *for reſtoring to the Crown the ancient Juriſdiction over the State Eccleſiaſtical and Spiritual, and aboliſhing all Power repugnant to the ſame*, and in the Statute of 2 *Eliz.* in *Ireland*, *cap.* 6. intituled, *An Act whereby certain*

(*a*) See *Dyer*, f. 31. 232. 298. 360. *Cook*'s 7 Rep. f. 23. 11 Rep. f. 65. of Hon. p. 837. 840, 841. (*b*) 21 *H.* VII. 7. Br. Alienation 9. 30 *E.* III. 17. Br. Alienation, 23 & 30. (*c*) *Selden*'s Tit. where this is largely proved; & p. 424. (*d*) *Cap.* 29. See *Cook*'s 2 Inſt. p. 48, 49. (*e*) Page 202 to 307. (*f*) See my Plea for the Lords and Houſe of Peers, 202, 203, to 309. (*g*) 3 Inſt. f. 30.

Offences are made High Treaſon, I met with theſe two Clauſes concerning the Trial of *Iriſh* Peers for Treaſons only within theſe Acts. " And if " it ſhall fortune that any Peer of this Realm ſhall happen to be indicted " of and for any Offence that is made Premunire or Treaſon by this Act, " that then the ſame Peer or Peers ſo being indicted, ſhall be put to an- " ſwer for every ſuch Indictment before ſuch Peers of this Realm, of " *Engliſh* Blood *(not* Iriſh, *mark it)* as by the Lord Deputy, Governor " or Governors of this Realm, ſhall be by Commiſſion appointed under " the Broad Seal, and to have his and their Trial by his and their Peers; " and to receive and have ſuch like Judgment upon the ſame Trial of his " or their Peers, or making open Confeſſion of the ſame Offence or " Offences, as in other Caſes of Treaſon or Premunire hath been uſed, " or is uſed in other Caſes of High Treaſon and Miſpriſion of Treaſon; " which latter Clauſes, As in other Caſes of Premunire and High Trea- " ſon hath been uſed, and, As is uſed in other Caſes of High Treaſon, " or Miſpriſion of Treaſon, relate only unto thoſe Words, To receive " and have like Judgment upon Trial; and ſo only to the Judgment and " Sentence given in theſe new Treaſons and Offences enacted by theſe " Acts, not to the Manner of Trial by Peers;" which is merely a new Kind of Trial never mentioned in any other *Iriſh* Acts before theſe, and reſtrained only to the new Treaſons and Premunires ſpecified in theſe Acts, in Imitation of the (*a*) *Engliſh* Statutes made in the ſelf-ſame Caſes, which provide *a Trial by Peers for our Engliſh* Peers; which was never heard of in any other Acts of Parliament in *Ireland* till theſe, and never practiſed that I read of in that Realm, either before or ſince. To clear this up more fully, the Statute of 11 *E.* III. *c.* 4. makes mention of *Prelates, Earls, and Barons in* Ireland, as well as in *England:* And the Statute of 4 *H.* V. *c.* 6. prohibits, *That any one of the* Iriſh *Nation ſhould be choſen to be an Archbiſhop, Abbot, or Prior, within* Ireland, *becauſe many of them (againſt a former Act there made) had been made Archbiſhops, Biſhops, Abbots, Priors, whereby they became Peers of the Parliament in the ſame Land, and brought with them* Iriſh *Servants to the Parliaments and Councils there holden, whereby the Privities of the* Engliſhmen *within the ſame Land have been, and be daily diſcovered within it to the* Iriſh *People Rebels to the King, to the great Peril and Miſchief of the King's lawful liege People in the ſame Land.* And the Statute of 10 *H.* VII. *in Ireland, c.* 16. enacts, *That the Spiritual and Temporal Lords of the Land of* Ireland *ſhall appear in every Parliament holden in that Land* in their Parliament Robes, *in like Manner and Form as the Lords of the Realm of* England *appear in the Parliaments holden within the ſaid Realm,* under Pain of forfeiting 100*s. to the King: Which Uſe of Robes they had there for Penury omitted by the Space of* 20 *or* 24 *Years.* But there is no Mention of any Trial by their Peers in theſe or any other *Engliſh* or *Iriſh* Statutes, but thoſe forecited of 2 *Eliz. c.* 1 & 6. Yea the Statute of 25 *H.* VI. in *Ireland, c.* 28. enacts, *For that there is a Law eſtabliſhed, That* every Lord *that is called* a Lord of the Parliament, *in all Pleas, perſonal as well as real,* in which Amerciaments do lie, *ſhall be amerced* 100*s. to the great Impoveriſhment of the ſaid Lords, foraſmuch as their Livings are diminiſhed and waſted by War: That* no Lord or Parliament *ſhall be amerced from theneforward in the ſaid Pleas,* otherwiſe than other Perſons, *notwithſtanding any Law made before to the contrary.* The Amerciaments therefore of *Iriſh* Lords and Commons being alike by this Law, it is very probable their Trials by Jury were both alike, and that they were not tried by their Peers.

Now the Priſoner's Counſel have pleaded in his Plea, That *Magna Charta* gives the Trial by Peers in *Ireland*, and no other Law but it; and that it was not accepted, received, confirmed, and uſed as a Law in *Ireland* till the Statute of 10 *H.* VII. and the Words thereof (if it be confirmed by that Act) are moſt clear in it, *That all Statutes* late made, &c. from henceforth *be deemed, accepted, uſed, and executed within this Realm of* Ireland *in all Points*; and if it were made a Law there by the Statute 8 *E.* IV. *c.* 1. (which I rather believe) the Words of that Act are, *That* from henceforth *all other Statutes and Acts made by Authority of Parliament in* England, *be ratified, confirmed, and adjudged by Authority of this Parliament in their Force and Strength,* from the firſt Day of March. So as *Magna Charta* was not a general Law in Force, Uſe, Acceptance, or Execution in *Ireland*, at leaſt among the *Iriſh*, till 8 *E.* IV. or 10 *H.* VII. as is evident by theſe Acts. Becauſe I would leave nothing concealed or unanſwered that might make for the Priſoner's Advantage, I muſt acknowledge that King *Henry* III. in the firſt Year of his Reign ſent a Roll of the Liberties which his Father King *John* and he had granted to this Realm of *England* unto *Ireland*, out of his ſpecial Grace, by unanimous Conſent of all his Lieges, and confirmed the ſame to all his Spiritual and Temporal Lords and faithful Subjects there (for their Fidelity to him and his Father) to them and their Heirs for ever, as a ſignal Badge of his Favour, by this Patent: (*b*) *Rex, Archiepiſcopis, Epiſcopis, Abbatibus, Comitibus, Baronibus, Militibus, et libere tenentibus et* omnibus fidelibus ſuis per Hiberniam conſtitutis, *Salutem.* Fidelitatem *veſtram in Domino commendantes, quam Domino patri noſtro ſemper exhibuiſtis, et nobis eſtis diebus noſtris exhibiti; volumus quod in ſigno fidelitatis veſtre tàm præclare tam inſigniter* Libertatibus Regno noſtro Anglie a Patre noſtro et nobis conceſsis, de gratia noſtra et dono in Regno noſtro Hibernie gaudiatis, vos et veſtri imperpetuum: *Quas diſtinctè in Rotulum redactas,* de communi conſilio omnium fidelium noſtrorum *vobis mittimus, ſignatas ſigillo Domini* Gualonis *Apoſtolicæ ſedis Legati, et fideliſſimi noſtri* Willielmi Mareſcalli (*c*) Rectoris noſtri et Regni noſtri, *quia ſigillum nondum habuimus; eaſdem proceſſu temporis* majorum conſilio proprio ſigillo firmandas. *Teſte apud* Gloverniam 3 *die* Februarii; he being (*d*) crowned but on the 28th of *October* before at *Gloceſter*, where this Patent bears Date.

After which King *Henry* having ratified the Great Charter of Liberties in *England*, in the ninth Year of his Reign (printed in all our Statute Books, and in *Cook*'s 2 Inſtitute), in the 12th Year he commanded it, or rather that of Pat. 6. *Johan.* Reg. m. 6. to be publiſhed openly in *Ireland* by his Writ; (*e*) " Rex, dilecto et fideli ſuo R. *Burgo.* Juſtic. ſuo *Hi-* " *berniæ*, ſalutem. Mandamus vobis firmiter præcipientes, quatenus " certo die et loco faciatis venire coram vobis, *Archiepiſcopos, Epiſcopos,* " *Abbates, Priores, Comites & Barones, Milites, et libere tenentes, et Bal-* " *livos ſingulorum Comitatuum*, et coram eis publice legi faciatis Cartam " Dom. Regis Johannis patris noſtri cui ſigillum ſuum appenſum eſt, " quam fieri fecit jurari a Magnatibus *Hiberniæ*, de legibus et conſuetu- " dinibus *Angliæ* obſervandis in *Hibernia.* Et præcipiatis eis ex parte " noſtra, quod leges illas et conſuetudines in Carta prædicta contentas de " cætero firmiter teneant et obſervent. Hoc idem per ſingulos Comi- " tatus *Hiberniæ* clamari faciatis et teneri Prohibentes firmiter ex parte " noſtra, et ſuper forisfacturam noſtram ne quis contra hoc mandatum " noſtrum, venire præſumat, eo excepto quod non de morte nec de ca- " tallis *Hibernenſium* occaſione nichil ſtatuatur ex parte noſtra citra " quindecim *dies a die St.* Michaelis, *anno r. n.* 12. *ſuper quo reſpectum de-* " *dimus Magnatibus noſtris* Hiberniæ, *uſque ad terminum prædictum. Teſte* " *meipſo apud* Weſtm. 8 *die* Maii, *anno* 12."

In *Cook*'s 3 Inſtit. f. 141. b. 4 Inſtit. p. 329. b. *et* in 18 *H.* III. Rot. Par. m. 17. n. 21. there is mention made of *Conſuetudines et Leges Regni noſtri* Angliæ, *quas bonæ memoriæ Dominus* Johannes *Rex pater noſter* de communi omnium de Hibernis conſenſu teneri ſtatuit in terra ilia. Teſte Rege apud *Winch.* 28 die *Octob.*

In the thirtieth Year of *Henry* III. all Laws and Cuſtoms of *England* were eſtabliſhed in *Ireland* by this (*f*) Patent: *Quia pro communi utilitate terræ* Hiberniæ, *et pro unitate terrarum, Rex vult*, et de communi conſilio Regni proviſum eſt, quod omnes Leges et Conſuetudines que in Regno Anglie tenentur in Hibernia teneantur, et eadem terra eiſdem legibus ſubjaceat, et per eaſdem regatur, *ſicut* Johan. *Rex cum ultimo eſſet in* Hibernia, ſtatuit et firmiter mandavit: *Ideo volumus, quod omnia Brevia de communi jure quæ currunt in* Anglia, *ſimiliter currant in* Hibernia *ſub novo ſigillo noſtro*, &c. *Teſte meipſo apud* Woodſtock, 19 *die* Septemb.

The Patent of King *John*, which this Patent mentions, is that of *Rot. Pat.* 6 *Johan.* Regis, m. 6. n. 17. never yet printed. *Rex*, &c. *Juſticiariis, Baronibus, Militibus, et omnibus fidelibus ſuis*, &c. *Sciatis quod dedimus poteſtatem Juſticiariis noſtris* Hiberniæ, *quod Brevia ſua currant per terram noſtram et poteſtatem* Hiberniæ, *ſcilicet* Breve de Recto, *de feodo dimidiæ Militis, et infra*; *et erit terminus de morte aut poſt transfretationem* Henrici *patris noſtri de* Hibernia *in* Angliam. *Et* Breve de *nova* diſſeiſina, *et erit terminus poſt primam Coronationem noſtram apud* Cant. *Et* Breve de Fugitivis et Nativis, *et ejus erit terminus poſt captionem* Dublin. *Et* Breve *de diviſis* faciendis *inter duas villas, exceptis* Baroniis: *Et ideo vobis mandamus et firmiter præcipimus, quod hæc ita fieri et firmiter teneri per totam poteſtatem noſtram* Hiberniæ *faciatis. Teſte meipſo apud* Weſtm. 2 Novemb.

In the 41ſt Year of his Reign Clauſe 41 *H.* III. m. 11. dorſ. I find this memorable Writ, touching the Confirmation and Cuſtoms of *England* ſettled in *Ireland*, by Aſſent of the Prelates and great Men thereof: Rex, Theſaurario et Baronibus de Scaccario *Dublin*, ſalutem. Quia de aſſenſu et voluntate Prælatorum et Magnatum terræ *Hiberniæ* dudum fuit proviſum et conceſſum, quod eiſdem legibus uterentur in terra illa quibus homines regni noſtri utuntur in regno illo; et quod eadem Brevia quoad terras et tenementa recuperanda currerent in terra illa, quæ currunt in regno prædicto, ſicut noſtis: Et dicta proviſio et conceſſio omnibus retroactis temporibus fuerint obtenta et approbata; miramur quamplurimum, quod ſicut ex inſinuatione venerabilis patris *Thomæ Liſmor.* Epiſcopi accepimus, emanare permiſiſtis ex Cancellaria *Edwardi* filii noſtri in *Hibernia*, contra conſuetudinem obtentam et formam Brevium in regno noſtro uſitatam, Breve ſubſcriptum contra præfatum Epiſcopum in hæc verba: *E.* illuſtris Regis *Angliæ* primogenitus Vic. *Waterford*, ſalutem. Precipe *Thomæ Liſmor.* Epiſcopo, quod juſte et ſine dilatione reddat *Waltero* Epiſcopo *Waterfordi* Maneria de *Archmordeglan, Kilmordri* et *Motha* cum pertinentiis, quæ clamat eſſe jus Eccleſiæ ſuæ, et in quæ idem Epiſcopus non habet ingreſſum niſi per *Alanum* quondam *Liſmor.* Epiſcopum cui *Griffinus* quondam *Liſmor.* Epiſcopus illa demiſit, qui in illa ſe intruſit poſt mortem *Roberti* quondam *Liſmor.* Epiſcopi, qui inde injuſte et ſine judicio diſſeſuit *Robertum* quondam *Waterford.* Epiſcopum, prædeceſſorem Epiſcopi poſt ultimum reditum, &c. Quia vero dictum Breve tam diſſonum eſt, et contra leges et conſuetudines in regno noſtro obtentas, et formas Brevium noſtrorum ibidem approbatas, præſertim cum Breve ingreſſus non tranſeat tertiam perſonam, nec ratione intruſionis in terram aliquam poſt mortem alicujus competat actio alicui de terra illa, niſi illi cui per mortem illam jus debetur in eadem: Nec enim dicitur intruſor, qui jure hæreditario, vel ratione Eccleſiæ ſuæ, ſuccedit prædeceſſori ſuo in hiis de quibus idem prædeceſſor fuit ſeiſitus in Dominico ſuo ut de feodo die quo obiit: Vobis mandamus, quod ſi dictum Breve a Cancellaria prædicta in forma prædicta emanaverit, executionem ejuſdem Brevis ſuperſedeatis; revocantes ſine dilatione quicquid per idem Breve actum fuerit in Curia præfati filii noſtri. Teſte apud *Wynd.* 27 die *Januar.* Eodem modo ſcribitur *Alano le Suche* Juſtic. *Hiberniæ*, et *Waleranno* de *Welleſly*, et ſociis ſuis Juſticiariis itinerantibus, ut ſupra.

In the fifth Year of King *Edward* III. rot. Pat. 5 *E.* III. parte 1. memb. 25. it was enacted in a Parliament that Year in *England*, among other Things, *Quod una et eadem Lex fiat tam* Hibernicis *quam* Anglicis, *excepta ſervitute Vicagiorum penes Dominos ſuos*, &c. by a Parliament then holden in *Ireland.*

(*a*) 1 *El.* c. 1. 6. (*b*) Pat. 1 *H.* III. m. 3.
(*c*) King *Henry* being then a Minor, and under his Regiment. (*d*) *Mat. Paris* Hiſt. *Angl.* p. 278.
(*e*) Clauſe 12 *H.* III. part 1. m. 8.
(*f*) Rot. Par. 30 *H.* III. m. 3. Sir *John Davis*'s *Iriſh* Rep. p. 37. *Cook*'s 4 Inſtit. p. 350. 1 Inſtit. f. 141. b. Mr. *St. John*'s Argument at *Strafford*'s Attainder, in *Ruſhworth*'s Coll. Vol. VIII. p. 695.

Yet notwithſtanding all theſe Patents, Charters, Acts, the Benefit of the Great Charter, and of the Liberties, Laws, and Cuſtoms of *England*, extended not to all *Ireland*, and the *Iriſh* therein dwelling; but only to ſuch Parts of *Ireland* as were reduced and divided into Counties, and poſſeſſed by the *Engliſh* Colonies, and to the *Engliſhmen* inhabiting in *Ireland*, and ſuch *Iriſh* within the *Engliſh* Pale as lived in due Subjection and Obedience to the Kings of *England*, or were ſpecially endenized by their Patents to them, not to the *Iriſh* Countries and Colonies which were not reduced into Counties, and under the Obedience of the Kings of *England* (amounting to more than two third Parts of *Ireland* in Extent of Ground) who had no Benefit of the Laws or Liberties of *England*, but by ſpecial Grants and Charters of Indenization from the Kings of *England*, which ſome Septs of the *Iriſh* and others purchaſed from our Kings, as Sir *John Davis* proves at large in his *Iriſh* Reports, in the Caſe of *Taniſtry*, fol. 37, 38, 39. and the Records there cited: To which I ſhall add theſe following Records not mentioned by him, fully evidencing this Truth. *Clauſ.* 37 *H.* III. *m.* 15. *Dorſ. Rex Juſtic.* Hiberniæ *ſalutem. Monſtravit nobis* Mamorth Offerthierim, *et* Rothericus *frater ejus quod Anteceſſores ſui et ipſe, licet* Hibernienſes *fuiſſent, ſemper tamen firmiter fuerunt ad fidem et ſervitium noſtrum et prædeceſſorum noſtrorum Regum* Angliæ, *ad Conqueſtum una cum* Anglicis *faciendum ſuper* Hibernienſes. *Et ideo vobis mandamus, quod ſi ita eſt, tunc non permittas ipſos* Mamorth *et* Rodericum *repelli, quin poſſint terras vendicare in quibus jus habent,* ſicut quilibet Anglicus. *Quia ſi ipſi et Anteceſſores ſui ſic ſe habuerunt cum* Anglicis *quamvis* Hibernienſes, *injuſtum eſt, licet* Hibernienſes *ſint, quod exceptione qua repelluntur* Ibernenſes *a vendicatione terrarum et aliis repellantur.* Teſte, *&c.*

By this Record it is apparent, that all *Iriſhmen* but thoſe whoſe Anceſtors joyned with our Kings in the Conqueſt of *Ireland*, and were loyal Subjects to our Kings, had no Benefit of the King's Writs and Laws to claimor recover Lands in *Ireland*, in 37 *H.* III.

Hereupon divers native *Iriſhmen* purchaſed ſeveral Patents from our Kings, granted out of ſpecial Grace to enable themſelves and their Poſterity to enjoy the Benefit of the *Engliſh* Laws in *Ireland*, for which I ſhall cite theſe few enſuing Precedents, inſtead of many of like nature. Pat. 17. *Johan.* Reg. memb. 15. together with Pat. 12. *E.* I. m. 11. *Pro diverſis in* Hibernia, *quod uti poſſint Legibus* Angliæ *in* Hibernia. *Rex omnibus Ballivis & fidelibus ſuis* Hiberniæ *ad quos*, &c. *ſalutem. Volentes* Giraldo *fil.* Johannis Hibernico, *gratiam facere ſpecialem, concedimus pro nobis et Hæredibus noſtris, quod idem* Geraldus *et liberi ſui quos legitime procreavit, hanc habeant libertatem, quod ipſi de cætero in* Hibernia utantur legibus Anglicanis; *et firmiter inhibemus, ne quis eos contra hanc conceſſionem noſtram vexet in aliquo, vel perturbet. In cujus*, &c. *T. Rege apud* Carnarvan, 30 *die* Maij. *Conſimiles literæ habet* Margeria de Leſſan, Henricus de Leſſan, Petrus de Leſſan, Andreus de Leſſan, Benedictus *filius* Johannis, Ardmagh, Willielmus Heuke, Hibernici. In cujus, *&c.* Teſte ut ſupra.

Pat. 18. *E.* I. m. 24. *Rex omnibus Ballivis et fidelibus ſuis* in Hibernia, *ad quos*, &c. *ſalutem. Volentes* Iſamaiæ *filiæ* Oragilig, *et* Matildæ *filiæ* Oragilig, Hibernicis, gratiam facere ſpecialem, *concedimus pro nobis et hæredibus noſtris, quod eadem* Iſamaia *et* Matilda *ad totam vitam ſuam hanc habeant libertatem, videlicet, quod ipſæ de cætero in* Hibernia utantur legibus Anglicanis: *Et firmiter inhibemus, ne quis eas contra hanc conceſſionem noſtram vexet in aliquo vel perturbet: In cujus*, &c. *T. Rege apud* Weſtm. 12 *die* Junii, *per ipſum Regem.*

Pat. 19. *E.* I. m. 20. *Rex omnibus ad quos*, &c. *ſalutem. Sciatis quod de* gratia noſtra ſpeciali, *conceſſimus* Willielmo *filio* Carmok. *Clerico, quod ipſe et omnes poſteri ſui imperpetuum* Lege et Conſuetudine Anglicana utantur in terra nostra Hibernie, *ita quod ipſi per alias leges et conſuetudines, per nos et miniſtros noſtros quoſcunque de cætero non deducantur contra voluntatem ſuam, ſed quod ipſi in vita ſua et morte de cætero* libertate gaudeant Anglicana. *In cujus*, &c. *Teſte Rege apud* Aſherurg. 22 *die* Jan.

The like Patent is granted *Mauricio de Bre. Hibernico*, Pat. 24. *E.* I. m. 3. Theſe Records, with *Clauſ.* 2. *E.* III. m. 17. *Rex dilecto et fideli ſuo* Johanni Darcy, *de* Nevien, *Juſticiario ſuo* Hiberniæ, *ſalutem. Ex parte quorundam hominum de* Hibernia *extitit ſupplicatum*, Ut per ſtatutum inde faciendum concedere velimus, quod omnes Hibernici qui voluerint legibus utantur Anglicanis ita quod neceſſe non habeant ſuper his chatias aliquas a nobis impetrare. *Nos igitur certiorari volentes, ſi ſine alieno præjudicio præmiſſis annuere valeamus, vobis mandamus, quod* voluntatem magnatum terre illius in proximo Parliamento ibidem tenendo, *ſuper hoc cum diligentia perſcrutari faciatis, et de eo quod inveneritis, una cum veſtro concilio et adviſamento nos diſtincte et aperte cum celeritate qua poteſtis, certificetis, hoc breve noſtrum nobis remittentes:* Which, compared with *Clauſ.* 5. *E.* III. part. 1. m. 25. *Pro hominibus terræ* Hiberniæ *de Lege* Angliæ *utenda in cuſtodiis recuperandis*, &c. are an unanſwerable Evidence beyond Contradiction, that the Great Charter, Liberties, Cuſtoms, and Laws of *England*, granted to thoſe of *Ireland* by King *John*, *Henry* III. *Edw.* I. and III. extended only to the *Engliſh* Subjects inhabiting *Ireland*, and to ſuch *Iriſh* who lived in *Engliſh* Counties in due Subjection to the Kings of *England*, or were by ſpecial Charters of Indenization enabled to enjoy the Benefit of them; who were but few in conſideration of the reſt of the *Iriſh* Nobility, Gentry, and Commons, retaining their ancient *Brehon* Laws, and would not ſubmit to the Laws of *England*, nor Government of our Kings, againſt whom they frequently rebelled, being reputed rather Enemies than Rebels, and uſually ſo ſtiled in the Statutes of *Ireland*, till the Statutes of 33 *H.* VIII. *c.* 9. as appears by the Statutes of 18 *H.* VI. *c.* 3. 25 *H.* VI. *c.* 4, 5. 28 *H.* VI. *c.* 1. 3 *E.* IV. *c.* 2. 5 *E.* IV. *c.* 6. 18 *E.* IV. c. 2. 10 *H.* VII. *c.* 9, 10, 17, 19. 28 *H.* VIII. *c.* 11. and by Sir *John Davis*'s *Iriſh Reports*, in the Caſe of *Taniſtry*, fol. 39. the Common Laws and Statutes of *England* being not univerſally received or eſtabliſhed throughout the whole Realm of *Ireland*, till after the Statutes of 3 and 4 *Phil. et Mar. c.* 3. 11 *Eliz. c.* 9. and King *James* his Proclamation in the third Year of his Reign; or at leaſtwiſe till the Statutes of 8 *E.* IV. *c.* 1. or 10 *H.* VII. *c.* 22. which eſtabliſhed all the Statutes made in *England*, concerning or belonging to the Good of the ſame, only as to the *Engliſhry*, or *Engliſh* Pale and Counties, not to the *Iriſhry*, as the Statutes of 17 *H.* VII. c. 8, 9, 10, 11, 13, 17, 19. 35 *H.* VI. c. 3. 5 *Ed.* IV. c. 3, 4, 5. 13 *H.* VIII. c. 3. 28 *H.* VIII. c. 15. made in *Ireland*, with other Acts reſolve, which the Lord *Magwire* confeſſeth in his Plea, and his Counſel cannot deny. Now the Lord *Magwire* being none of the *Engliſh* Pale, or *Iriſh* Septs, Liege Subjects to our Kings, but of the *Iriſhry*, and profeſs'd Enemies to our Kings, as the *Iriſh* Annals and Statutes inform us; the Statute of *Magna Charta*, and the Laws, Liberties, and Cuſtoms of *England*, granted to the *Engliſh* and loyal *Iriſh* Subjects in *Ireland*; and ſo this Trial by Peers could not extend to his Anceſtors till after the Statutes of 8 *E.* IV. or 10 *H.* VII. and of 35 *H.* VIII. c. 1. yea, after the Statutes of 3 and 4 *Ph.* and *Ma.* c. 3. and 11 *Eliz.* c. 9. for reducing the *Iriſhry* into Counties, and under the Laws and Statutes of *England*, to which they were not formerly ſubject. And from theſe Patents of King *John* and *Henry* the Third fore-cited, and the Statutes of 8 *E.* IV. and 10 *H.* VII. 'till 35 *H.* VIII. cap. 1. no one Precedent of any one *Iriſh* Peer's Trial by his Peers in *Ireland*, in any Caſe whatſoever, can be produced; therefore certainly there was no ſuch Trial known or in uſe in *Ireland*, before 35 *H.* VIII. nor any Precedent of it ſince, till one of late; and *una Hirundo non facit Ver.*

If then the Peers of *Ireland*, before the making of this Act of 35 *H.* VIII. were never actually tried by their Peers, for any Treaſon done in *Ireland*, for aught can be proved, and there be no expreſs Act for any Trial by Peers there, for any Treaſon, but only the Act of 2 *Eliz.* c. 1. and 6. and that only for ſpecial Treaſons within thoſe Laws, which are none of thoſe for which the Priſoner ſtands here indicted; I may ſafely conclude, That this Law of 35 *H.* VIII. never intended to preſerve to *Iriſh* Peers a Trial by their Peers in *Ireland*, which kind of Trial was never before had, uſed, or practiſed in that Realm; and therefore the Priſoner ſhall be tried by an ordinary Jury at this Bar, not by his *Iriſh* Peers; becauſe, if he were in *Ireland*, (for aught appears yet to me) he ſhould not be tried by his Peers there: And in both theſe Points, the Book in *Dyer* (the only Authority which ſeems to be the ſtrongeſt againſt) is for me, the Words whereof are theſe in *Engliſh: The grand Chancellor of* Ireland *moved this Queſtion to the Queen's Counſel, If an Earl or Lord of* Ireland, *who commits Treaſon in* Ireland, *by Rebellion, ſhall be arraign'd and put to his Trial in* England *for this Offence, by the Statutes of* 26 *H.* VIII. *c.* 13. 32 *H.* VIII. *c.* 4. 35 *H.* VIII. 2 *or* 3 *E.* VI. And it was held by *Wrey, Dyer*, and *Gerrard*, Attorney General, That he could not: Mark now their Reaſons, *for he cannot have his Trial here by his Peers* (which is a full Reſolution in point of my third Queſtion, agreeing with what I have endeavour'd with Arguments to prove, and is an unqueſtionable Truth, which I ſubmit to). Then it follows, *Nor can he be tried here by any Jury of Twelve*; mark the Reaſon, not becauſe he is a Peer of *Ireland*, and therefore ought to be tried by his Peers, and not by a Jury, for that had been full againſt me, and it is now the only Knot in Queſtion, but becauſe he is not a Subject of *England*, but of *Ireland*, and therefore he ſhall be tried there; which Reaſon (extending as well to an *Iriſh* Commoner as Peer) hath been ſince adjudged directly falſe, abſurd, and againſt the Law, both in *Orourk*'s Caſe, and in Sir *John Perrot*'s Caſe, and ſince in *Mac-Mahon*'s Caſe. And Sir *Edward Cook* informs us in his Inſtitutes on *Lit.* f. 261. that *Wrey* himſelf, in *Orourk*'s Caſe (where this Opinion of his was vouch'd), did openly diſclaim, that ever he delivered any ſuch Opinion as this, but ever held the contrary to it; and ſo it is a Miſreport in this particular: After which, the Book concludes thus: *And it is ſaid, that the Uſage* (to wit, in *Ireland*) *to attaint a Peer, is by Parliament*, and not by Peers, which comes full *in terminis* to what I have laſt inſiſted on, and, I am certain, cannot be diſproved. Wherefore this Authority in *Dyer*, as to all that is Truth and Law in it, is wholly for me, in the Reaſon of the Law, and againſt me only in what hath been ſince adjudged to be no Law. I ſhall cloſe up all with a ſtronger Caſe and Authority than this in Queſtion, which will over-rule this Caſe, and that was in *Trinity* * Term, An. 33 *H.* VIII. in the *King's-Bench: Edward* Lord *Gray*, immediately before having been Lord Deputy of *Ireland*, was indicted, arraign'd, and attainted of High-Treaſon, by an ordinary Jury in the *King's-Bench*, in *England*, for letting divers Rebels out of the Caſtle of *Dublin*, and diſcharging *Iriſh* Hoſtages and Pledges, that had been given for the ſecuring the Peace of *Ireland*; and not for puniſhing one who ſaid, the King was an Heretick, whilſt he was Lord Deputy in *Ireland:* For theſe Treaſons (all acted and committed in *Ireland)* though an *Engliſh* Peer, he was tried by an ordinary Jury in *England*, by the Statute of 26 *H.* VIII. c. 13. ratify'd in *Ireland* by 28 *H.* VIII. c. 7. fore-cited; which ſecluded him from his Trial by Peers, being not ſaved by theſe Acts: Therefore *a fortiori* ſhall theſe Statutes, and this of 35 *H.* VIII. c. 2. and 5 *E.* VI. cap. 1. made ſince his Judgment, exclude this *Iriſh* Lord, being no *Engliſh* Peer, from any Trial by his Peers.

Finally, the Prologue of this Statute, coupled with the Body thereof, puts a Period to this Queſtion, beyond all Doubt or Diſpute. *Foraſmuch as* ſome Doubts and Queſtions have been moved, *that certain Kinds of Treaſons*, &c. *committed out of the King's Majeſty's Realm of* England, *cannot, nor may, by the common Laws of this Realm, be enquired of, heard, and determin'd within this his ſaid Realm of* England; *for a plain Remedy, Order, and Declaration, therein to be had and made, be it enacted*, &c. *That all manner of Treaſons*, &c. *committed by any Perſon or Perſons out of this Realm of* England, ſhall be, from henceforth *enquired of, heard, and determined by the King's Juſtices of his Bench*, &c. *by good and lawful Men of the ſame Shire, where the ſaid Bench ſhall ſit and be kept, in like Manner and Form*, to all Intents and Purpoſes, *as if ſuch Treaſons had been done within the ſame Shire, where they ſhall be ſo enquired of, heard, and determined.* The ſole Scope, End,

* Mr. *St. John's Argument at* Strafford's *Attainder*, in *Ruſhworth*, Vol. VIII. p. 689 & 695.

and

and Purpoſe then of the King and Parliament in this Act, being to take away all Doubts and Queſtions formerly moved in Point of Law, touching the Trial of Treaſons done out of the Realm, before the King's Juſtices of his Bench, and Commiſſioners in *England*, by a Jury, and to make and enact a plain Remedy and Declaration therein for the future, in Manner aforeſaid, I humbly apprehend, there can be no Doubt nor Queſtion now moved, whether this Priſoner ought to be tried by his Peers in *Ireland* or *England*, for this his moſt horrid Treaſon committed out of the Realm of *England*; ſince this Statute ſo clearly declares and reſolves the contrary, in moſt plain and poſitive Words. The rather, becauſe the King's Patent, creating him Baron of *Ineſkellin*, under the Great Seal of *Ireland*, maketh him only a Peer in *Ireland*, and gives him only a Place and Voice among the Peers and Nobles of Ireland, in the Parliaments of Ireland, not in *England*, as he ſets forth in his own Plea *(a)*, in preciſe Terms; as the Patent made by King *Edward* the Fourth, to *Robert Bold*, created him Baron of *Rathtauth* in *Ireland*, and conſtituted him, *Unum Dominum & Baronem omnium & ſingulorum Parliamentorum & magnorum Conciliorum noſtrorum* in terra noſtra Hibernie *tenendorum: Habendum, tenendum una cum ſtalo, titulo, nomine, honore, loco et ſeſſione inde ſibi et hæredibus ſuis maſculis imperpetuum.* And as King *Henry* VIII. *(b)* made *Thomas Viſcount Rochford*, by the ſelf-ſame Patent, both Earl of *Wiltſhire* infra regnum noſtrum Anglie, and Earl of *Ormond*, in terra et dominio noſtro Hibernie only, with ſeveral Clauſes of Inveſtitures; ſeveral *Habendums*, and ſeveral Creation-monies for each Title and Kingdom: And as the Patents of all other *Iriſh* Earls, Viſcounts, Lords, and Barons in *Ireland*, create and make them Peers only in *Ireland*, not in *England*, as learned Mr. *Selden* informs us *(c)*, and their very Patents reſolve *in terminis*; and therefore quite exclude the Priſoner, and all other Peers of *Ireland*, from any Trial by their Peers in *England*, either by the Proviſo or Body of this Statute, or their Patents, which are point-blank againſt it.

And now, I hope, I have fully made good the Point in Queſtion, with all the ſeveral Branches of it, That this Act extends to Treaſon committed in *Ireland*; yea, to *Iriſh* Peers, as well as to *Iriſh* Commoners; and that there can be no Trial at all upon it here of an *Iriſh* Peer by *Iriſh* Peers, nor in any Place elſe within *England*, and that only (as the Priſoner's Caſe is) by a *Middleſex* Jury. And ſo I have finiſhed my aſſertive Part.

The firſt and grand Objection is that which I meet with in the Beginning of this Priſoner's Plea, the Statute of *Magna Charta*, c. 29. That no Freeman ſhall be taken or impriſoned, or diſſeiſed of his Freehold, &c. nor will we paſs upon, or condemn him, but by the lawful Judgment of his Peers, or by the Law of the Land; which Law and Statute is, among others, eſtabliſhed for a Law in the Kingdom of *Ireland*, there to be put in ure at all Times when Need is, by the Statute made in the Parliament held at *Drogheda* in *Ireland*, in the tenth Year of King *Hen.* VII. c. 22. and by vertue of theſe two Laws he ought to be tried by his Peers in, or of *Ireland*, in this Suit againſt him by and for the King.

To which I ſhall give theſe ſatisfactory Anſwers:

1. That the Statute of *Magna Charta*, in its original Creation and Confirmation, was made and granted to the *Archbiſhops*, *Biſhops*, *Abbots*, *Priors*, *Earls*, *Barons*, *Towns*, *and to all the Freemen of this our Realm of* England, *and to them only*, *to be kept in our Kingdom of England for ever*, whence it is entituled, *The Great Charter of the Liberties of* England, as the Prologue of it reſolves. The firſt Chapter thereof is peculiar to the Church of *England*, viz. That the Church of England *ſhall be free, and enjoy all her Rights and Liberties inviolable. We have alſo granted to our Freemen of our Realm of* England *theſe Liberties under-written, to have and to hold to them and their Heirs, of us and our Heirs for ever.* So cap. 12. *The City of* London *ſhall have all her old Liberties and Cuſtoms, and all other Cities, Boroughs, Towns, and the Barons of the Cinque-ports, and all other Ports, ſhall have all their Liberties and their Cuſtoms.* Cap. 35. *One Meaſure of Wine,* &c. *ſhall be throughout our Realm.* Cap. 32. *All Merchants (if they were not openly prohibited before) ſhall have ſafe and ſure Conduct to depart out of* England, *to come into* England, *and to tarry in* England, *as well by Land as by Water,* &c. In Cap. 23. *All Weers ſhall be utterly put down between* Thames *and* Medway, *and throughout all* England: And the Concluſion, cap. 37. concerns the Realm of *England* and *Engliſhmen* only. Neither doth the Charter of King *John*, nor that of the 11 of *H.* III. nor 18 *H.* III. *m.* 17. nu. 21. nor of 30 *H.* III. nor yet of 13 *E.* I. cited in *Cook*'s 4 *Inſtit.* p. 349, and 350. and in his *Inſtit. on* Littleton, f. 141. eſtabliſh *Magna Charta* at leaſt in relation to all the native *Iriſh*, but *Engliſh* alone, it being made particularly for the Realm of *England*, and *Engliſhmen*; and therefore the Priſoner pleads, it was ſettled there only as a Law to be received and put in uſe (in reſpect of the *Iriſh* then living only in the *Engliſh* Pale, and the King's loyal Subjects, not of any *Iriſh* Enemies in Hoſtility) by the Statute of 10 *H.* VII. cap. 22. but not before: And ſo is Sir *Edward Cook*'s Opinion, in expreſs Terms, in his 4 *Inſtitut. pag.* 351.

By which it is moſt clear, that from King *Henry* the Second's Days, (who firſt ſubdued *Ireland*, An. 1171.) there were no Trials in *Ireland* of any *Engliſh* or *Iriſh* Peers, Subjects to our Kings, for Treaſon by their *Iriſh* Peers, by vertue of *Magna Charta*, 'till after the Statute of 10 *H.* VII. which was made but forty-ſix Years before the Statute of 35 *H.* VIII. between which, and this later Law, we read not of one Trial of any *Iriſh* Peer for Treaſon there by his Peers, nor yet ſince, that I can find, (but only one of late by 2 *El.* c. 1, 6.) till this very Day; by which it is moſt apparent, that this Trial by Peers in *Ireland*, (a Privilege now inſiſted on) was never actually claimed or enjoyed by any Peer of *Ireland*, eſpecially by thoſe in antient Enmity and Rebellion againſt our Kings, ſtiled Enemies in the *Iriſh* Statutes, and *Engliſh* Records, before the Statute of 35 *H.* VIII. and ſo it can be no Prejudice, nor Injuſtice at all, nor Breach of *Magna Charta*, to out the Priſoner of it.

2. It may be queſtioned upon very good Reaſons, Whether the Statute of 10 *H.* VII. cap. 22. doth confirm this Statute of *Magna Charta* in *Ireland*, or not? At leaſt as to *Iriſh* Peers, eſpecially thoſe of the old *Iriſh* Blood, (to whom it relates not, as I have proved in the Point of Trial by Peers) and that upon theſe Grounds.

Firſt, Becauſe the Words of that Statute are not, That all Laws made in *England*, ſhall be confirmed, received, and executed in *Ireland* in all Points; but, that *all Statutes late made within the Realm of* England, *concerning or belonging to the Commonweal (not Peers) of the ſame, ſhall henceforth be deemed good and effectual in Law, and received and executed in this Realm of* Ireland. Now *Magna Charta* being no Law then *late made within this Realm*, but made at leaſt two hundred ſeventy-one Years before it, can hardly (without much ſtraining of the Words beyond their proper Meaning) be brought within the Compaſs of this Act; though Sir *Edward Cook*, in his fourth Inſtitute, pag. 351. informs us, That *Hil.* 10 *Jac.* it was reſolved by the two Chief-Juſtices and Chief-Baron, that this Word *late*, in this Act, hath the Senſe of *before*, and ſhall not be taken in its proper Senſe or Meaning: So that the Act, by this Conſtruction, againſt the Senſe of the Words, extends to *Magna Charta*, and to all the Acts of Parliament made in *England*, not only *late*, but even long *before*, yea, many hundred Years before this Act; which, for my part, (under the Favour of thoſe reverend Judges, who thus interpret it) I hold ſtill diſputable, yea, erroneous, and no Law at all, eſpecially for theſe two Reaſons:

1. Becauſe if any Law introduced and confirmed *Magna Charta*, and the other Laws of *England* in *Ireland*, it is the Statute of 8 *E.* IV. cap. 1. which confirms the Statute made in *England*, in the Parliament of 6 *R.* II. c. 6. concerning Rapes, of which there was ſome doubt made, whether it extended to *Ireland?* and then concludes thus: *In avoiding all inconvenience that might happen, becauſe of the Ambiguity of the ſaid Statute, Be it enacted, confirmed, and ratified by Authority of the ſaid Parliament, That the ſaid Statute be adjudged and approved in Force and Strength, and may be of Force in this Land, from the Sixth Day of* March *laſt paſt*; *and that from henceforth, the ſaid Act*, and all other Statutes and Acts, *made by Authority of Parliament within the Realm of* England, *be ratified, confirmed, and adjudged by Authority of this Parliament, in their Force and Strength, from the ſaid Sixth Day of* March. So that this Law, if any at all, confirmed *Magna Charta*, and all the Statutes made by Authority of Parliament in *England*, to be in Force and Uſe in *Ireland*, (yet only as to the *Engliſh* and *Iriſh* Subjects under the King's Obedience, and none elſe, as I have proved), and this Statute of 10 *Hen.* VII. which confirms only the Statutes lately made, muſt and doth, in Truth and Reaſon, relate only to the Laws made in *England* ſince that Statute of 8 *E.* IV. c. 1. not formerly there confirmed by that Act: So that the Priſoner's Plea, That *Magna Charta* was confirmed by 10 *H.* VII. is but a mere Miſtake, and a void Plea; neither are the Judges here bound to take Notice of this *Iriſh* Act of 8 *E.* IV. c. 1. unleſs pleaded by the Priſoner, being no Law of this Kingdom, and not binding here.

2. Becauſe the forementioned Charters of 6 *Joh.* 12. and 30 *H.* III. &c. confirming the Uſe of the Laws of the Realm of *England* in *Ireland*, did not extend to ſettle *Magna Charta* there, (at leaſt-wiſe not as to the Benefit of the natural *Iriſh*, but to the *Engliſh* and the *Iriſh* within the *Engliſh* Pale alone) as is agreed by Sir *Edward Cook*, and in a manner reſolved by this Act of 10 *H.* VII. as the Words thereof, *From henceforth be deemed good and effectual in the Law, and over that be uſed, accepted, and executed within the Land of* Ireland, *in all Points, at all Times requiſite*, import. And if thoſe Charters extended not to *Magna Charta*, which are fuller than this Act, I doubt this Law will hardly do it.

3. Admit the Law of 10 *H.* VII. extends to *Magna Charta* in ſome Particulars thereof formerly uſed in *Ireland*, yet it reacheth not to the trying of *Iriſh* Peers by their Peers now in queſtion, for theſe enſuing Reaſons:

1. Becauſe Trial of *Iriſh* Peers by their Peers in *Ireland*, was never uſed or heard of, nor is there any one Inſtance to be found before or ſince *Magna Charta*, till 10 *H.* VII. which there ſettled that great Charter for a Law, nor from 10 *H.* VII. till 35 *H.* VIII. nor ſince that, but of late, in one Caſe only, about twenty Years ſince, till this Inſtant. Now what *Littleton* notes of the Statute of *Merton*, Sect. 108. "That no "Action can be brought upon that Statute for a Diſparagement, for that "ſince the making of it, it was never ſeen or heard, that any ſuch Ac"tion was brought upon it againſt the Guardian; and if any ſuch Ac"tion might have been brought upon this Matter, it will be intended, "that ſome Time it would have been put in ure:" The like ſhall I ſay concerning *Magna Charta*, and the Trial of *Iriſh* Peers by their Peers in *Ireland*, That if the Trying of *Iriſh* Peers by their Peers had been the Common Law of *Ireland*; or if *Magna Charta*, and 10 *H.* VII. had eſtabliſhed it there for a Law, it would ſome Time or other have been there put in ure, and ſome Peers there would have claimed and enjoyed this their Privilege in point of Trial: But ſince it was never yet in Uſe there, for aught I find, nor any one can prove before 35 *H.* VIII. I cannot deem it the common Law, nor Privilege of the Peers of *Ireland*, but the peculiar Privilege of our *Engliſh* Peers, both by the common Statute-Law, and Great Charter of *England*, and no Trial of Right incident to *Iriſh* Peers, as it is to *Engliſh*; therefore this kind of Trial neither is confirmed to, nor intended to be conferred on *Iriſh* Peers by *Magna Charta*, which is but a Confirmation only of our *(d)* common Laws of *England*, and no Introduction of any new Law here; and ſo ſhould introduce no new Law there, but confirm the common Laws and Cuſtoms there formerly uſed, and ſo the Trial by Peers is not there ſettled in reſpect of the *Iriſh* Peers, by the Statute of 10 *H.* VII. Now that which principally confirms me in this Opinion, is the two ſpecial Acts of Parliament, made in *Ireland* in 2 *Eliz.* c. 1. and 6. already cited, which create a ſpecial Form of Trial of *Iriſh* Peers, not by their Peers there of *Iriſh* Blood, but by their Peers of that Realm, of the *Engliſh* Blood alone, only in the new Treaſons and Premunires ſpecified in, and created by thoſe two Acts, but in no other Treaſons; which Clauſes had been merely nugatory and ſuperfluous, had the Trial of *Iriſh* Peers in *Ireland*, by *Iriſh* Peers, been the Birth-right, and known Privilege of *Iriſh* Peers, either by

(a) Rot. Pat. 8 E. IV. *in Cancel. Hiberniæ*; Mr. *Selden*'s *Titles of Honour*, Book 2. c. 6. p. 840, 841.
(b) Pat. 21 *H.* VIII. pars 2. 8 *Decemb.* *(c) Titles of Honour*, Book 2. c. 6, 7. *(d) Co.* 2 *Inſtit. Proem.*

the Common Law there uſed, or by the Cuſtom of *Ireland*, or by *Maga Charta*, with this Act of 10 *H.* VII. confirming it. It therefore never being the Intent of this Act, nor of *Magna Charta*, to grant any new Privilege, or form of Trial, to *Iriſh* Peers, which they never formerly enjoyed, neither the one nor other will ſufficiently ſupport the Priſoner's Plea, nor indulge him any Trial here or there by his Peers of *Ireland* (at leaſt of *Iriſh* Blood) for ſo horrid a Treaſon as this; which I hope is a ſatisfactory Anſwer to this Objection, ſince Cuſtom is the beſt Expoſitor of all antient Laws, as Sir *Edward Cook* declares in his *Commentary on Littleton*, Sect. 108. f. 81. b.

4. Admit the Objection true, That *Magna Charta* extends to *Ireland*, by vertue of this Act of 10 *H.* VII. ſo far as to give *Iriſh* Peers, in *Ireland*, (though not of the *Engliſh* Pale) a Trial by their Peers, which they had not before its Confirmation there; yet then I anſwer, That this Statute of 35 *H.* VIII. c. 2. upon which the Priſoner is arraigned, by making all Treaſons done and perpetrated in *Ireland* triable in *England*, when there is juſt Occaſion, (as now there is, in this Time of a univerſal, horrid Rebellion, and in ſundry other fore-mentioned Reſpects) repeals this Clauſe of *Magna Charta*, and deprives the Priſoner of the Benefit of his Peerage, if at all conferred on him by it, and the Act of 10 *H.* VII. Since it is moſt certain, that Statutes made in the Parliaments of *England*, (being the ſupreme Kingdom and Court, to which *Ireland*, and its Courts, are ſubordinate, and whoſe erroneous Judgments in their High Courts and Parliaments there, were only reverſible here in *England*, in the *King's-Bench* and Parliament of *England*, as is evident by *Clauſ.* 7 *H.* III. *par.* 2. *m.* 10. and *Clauſ.* 29 *E.* III. *m.* 12. 8 *H.* VI. *rot. Parl. n.* 69. *Cook's* 4 *Inſtit. p.* 356. *Mr.* St. John's *Argument at Law*, *at* Strafford's *Art. Ruſhworth*, Vol. VIII. p. 696, 698. *Keilway*, f. 202. b. *Br. Error*, 127. *Fitz. Nat. Bre.* f. 24. *Co.* 7 *Rep.* f. 18. *a.* Calvin's *Caſe)* do oblige thoſe of *Ireland*, not only before, but ever ſince 10 *H.* VII. when *Ireland* is either particularly named, or generally included, as is agreed by *Raſtal's Abridgment*, Title *Ireland*, 11 *E.* III. c. 2. and 10 *E.* III. ch. 8. 4 *E.* IV. ch. 1. 3 *H.* VII. ch. 8. 14 *H.* IV. *Raſtal Parceners* 2. 27 *E.* III. of the Staple, ch. 1. 18. 14 *Eliz.* ch. 5. 1 *H.* VII. *aſſ.* 3. 3 *H.* VII. fol. 10. 2 *R.* III. f. 12. and *Cook's* 7 *Rep. Calvin's Caſe*, f. 17, 22, 23. 4 *Inſtit.* p. 35. it being ſo reſolved, as to this Purpoſe, by all the Judges of *England*, in *Orourk*'s, and Sir *John Perrot*'s Caſes, cited in *Calvin*'s Caſe, and adjudged in *Mac-Mahon*'s Caſe, tried at this Bar the laſt Term, that this Act of 35 *H.* VIII. c. 2. binds thoſe of *Ireland*, for Treaſons there committed, and makes them ſubject to a Trial here, whether Peers or Commoners, as I have already proved.

5. It is unqueſtionable, That every Commoner of *Ireland* hath as large, as full an Intereſt in *Magna Charta*, the Laws and Privileges of *England* and *Ireland*, and as much Right to be tried in *Ireland*, for Treaſon there committed, by an *Iriſh* Jury, as any Peer in *Ireland* hath in or by them to be tried there by his Peers, theſe Laws being no Reſpecters of Perſons, and every Man's Birth-right alike, of Commons as much as of Peers, as the Laws and Great Charter of *England* are; *Magna Charta* being as largely made, and as amply granted to the meaneſt Freeman, as to the greateſt Peers of *England* and *Ireland*, as the Prologue and 9, 14, 15, 19, 21, 22, 26, 27, 29 Chapters thereof reſolve.

Since then this Act of 35 *H.* VIII. chap. 2. doth, without all Controverſy, (as hath been reſolved in the fore-cited Caſe) deprive the Commoners of *Ireland* of a Trial in *Ireland* by *Iriſh* Commoners, and ſubjects them to a Trial by an *Engliſh* Jury here, for Treaſons there committed; for which, by the Common Law, the Cuſtoms of *Ireland*, and *Magna Charta*, before the Statute of 26 *H.* VIII. and this Act of 35 *H.* VIII. they could be no where tried, but only in *Ireland*, not in *England*, as is collected from the Caſe of Sir *Elias Aſhburnham*, Tr. 18 *E.* III. *coram Rege*, Rot. 14. cited by Sir *Edward Cook*, in his 4 *Inſtit.* p. 356. (the principal Caſe that can be objected againſt me, which makes nothing to the Purpoſe, being long before theſe Statutes were made): Therefore, by the ſelf-ſame Reaſon, it ſhall take away the Trial of *Iriſh* Peers in *Ireland* and *England* by *Iriſh* or *Engliſh* Peers, for Treaſons perpetrated by them in *Ireland*, and ſubject them to a Trial by an ordinary *Engliſh* Jury at this Bar, or before Commiſſioners in any County of *England*, as I have already proved; which Jury here are, in Truth, Peers to all *Iriſh* Peers, being here no Peers at all, but only Commoners.

If it be objected, That this Law of 35 *H.* VIII. chap. 2. cannot abrogate *Magna Charta*, all Acts and Judgments againſt *Magna Charta* being declared void, by 25 *E.* I. ch. 1, 2, 4. 28 *E.* I. c. 1. and 42 *E.* III. ch. 1. therefore it ſhall not take away the Trial by Peerage from *Iriſh* Peers:

I anſwer, 1. That you may, by like Reaſon, object, that it cannot take away a Trial in *Ireland*, by an *Iriſh* Jury, from *Iriſh* Commoners, ſeeing it cannot repeal *Magna Charta*, and the Common Law. But this Objection is yielded, and adjudged idle, in caſe of an *Iriſh* Commoner; therefore it is, and muſt be ſo in caſe of an *Iriſh* Peer.

2. The objected Statutes do make void and null all Acts and Statutes made againſt *Magna Charta*, before the Parliaments wherein they were made; but they extend not at all to future real Parliaments and their Acts, ſubſequent Parliaments having always had Power to controul, alter, and abrogate precedent Acts; yea, the very Common Law, and Great Charter itſelf, when inconvenient or defective, as all our Books accord: Therefore Sir *Edward Cook*, in his 4 *Inſtitute*, p. 42. reſolves, and proves at large, by 11 *R.* II. c. 3. 5 *rot. Parl. n.* 22, 48, 49, 1 *H.* IV. c. 3. 2 *H.* IV. c. 22. 21 *R.* II. c. 16. 1 *H.* IV. *n.* 48, 70, 144. 21 *R.* II. *n.* 20, 21, 36, 37, 85, 86, 89, 90. that "Acts, (yea, and Oaths) againſt "the lawful Power of ſubſequent Parliaments, that they ſhall not repeal "ſuch and ſuch Laws (tho' miſchievous or unjuſt) bind not at all, and "are merely idle:" For *eodem modo quo quid conſtituitur diſſolvitur*; thoſe who have Power to make any Laws, having as great, as full a Power to controul, alter, or repeal them, when they ſee Cauſe and Neceſſity for it; as you may read in *Raſtal's* and *Poulton's Abridgements* of *Statutes*, and the Statutes at large, repealing former Acts; and how often *Magna Charta* hath been altered, ſupplied, or (*b*) repealed, in ſome Particulars, in and by our Parliaments, ſince its making, by ſubſequent Acts, both by preſcribing, creating new Impriſonments, Forfeitures, corporal Puniſhments, Fines, Executions, Treaſons, capital Offences, Cuſtoms, and Impoſts, not then known, or different Ways, or Places of Trial, not then in Uſe, in Caſes of foreign Treaſons, and the like, by a Jury in *England*, not then uſual, but ſince confirmed by the Statutes of 26 *H.* VIII. c. 13. 28 *H.* VIII. c. 25. 33 *H.* VIII. c. 27. 35 *H.* VIII. c. 2. 5 and 6 *E.* VI. c. 11. contrary to, or (*c*) different from *Magna Charta*, and the Common Law, 2 *E.* VI. c. 24. is ſo well known to all Lawyers, that I will not ſpend Breath to prove it.

3. I anſwer, That this Act of 35 *H.* VIII. doth both alter, and, in ſome ſort, repeal *Magna Charta*, and the Common Law, as to the Point and Place of trying foreign Treaſons in *England* itſelf, as to *Engliſh* Peers and Commoners, to whom alone the Great Charter was firſt granted, they being not triable in *England*, by Jury or Peers, for any foreign Treaſons, by the Common Law, or Great Charter. Therefore, *a fortiori*, it muſt both alter and repeal the Common Law and Great Charter, as to *Iriſh* Subjects, for whom the Great Charter was never originally made, nor yet directly confirmed to them by 10 *H.* VII. but only implicitly and doubtfully at moſt, as I have proved.

4. I anſwer, that this Act of 35 *H.* VIII. doth no ways abrogate or alter *Magna Charta*, in Truth or Reality, but rather ratify and confirm it, in the Form and Manner of this Trial, though not in the Place: For *Magwire* being only a Peer in *Ireland*, but not in *England*, every Freeman of *England*, that ſhall be impannelled to try him, is, in Truth and Law, his Peer here. And this Act, enacting that he ſhall be tried, not by Martial Law, or the Judges themſelves, but by good and lawful men of the Shire where the *King's-Bench* ſhall ſit, who are his Equals and Peers in *England*, and ſaving the Trial by Peers to every Peer of this Realm, after his Indictment found by Jury. This Way and Form of Trial, by Jury in *England*, being then and now the Law of the Land, is no Contradiction or Repeal at all, but a direct Purſuit and Confirmation thereof, according to its Letter and Meaning. And ſo much in Anſwer to this grand Objection, wherein I have been over-tedious, but ſhall recompence it with Brevity in the Remainder.

The Second Objection (a mere Branch of the former) is this:

That if *Iriſh* Peers ſhould be triable by an ordinary Jury within this Law, for Treaſons done in *Ireland*, this might prejudice the whole Nobility of *Ireland*, who, by colour of this Act, might be ſent for out of *Ireland*, and tried here for Treaſons, Miſpriſions, and Concealments of Treaſons there committed, and ſo quite deprived of their Birth-right of Trial by their Peers, which would be of dangerous Conſequence.

I anſwer, 1. That I have manifeſted, that this Trial by Peers was never deemed, claimed, nor enjoyed in *Ireland*, as a Privilege, by *Iriſh* Peers, nor ever uſed or practiſed in that Land before this Act, and but once claimed ſince, and that in *Ireland*; therefore it cannot be intended, that this Statute, or the Makers of it, ever imagined to ſave this Manner of Trial by Peers only to *Iriſh* Peers, which they never enjoyed, nor ſo much as once claimed or poſſeſſed before the making of it. Neither can it be any Injury or Injuſtice to deprive them of that now, they never heretofore claimed, uſed, or enjoyed, as their Privilege, or Birth-right, being not indubitably ſettled on them by any Law that I have ſeen; but only in ſome ſpecial Caſes of Treaſon, ſince 35 *H.* VIII. whereof this is none, by the late Acts of 2 *Eliz.* c. 1 and 6. when as this Privilege is taken from them, not by a bare-ſtrained Expoſition or Implication, but by this expreſs Act of Parliament made long ſince for the common Good and Safety of *England* and *Ireland*, not yet repealed.

2. This Objection, with as great or greater Strength and Colour, might be made for all the Commons of *Ireland*, (far more numerous and conſiderable than their Peers) they being deprived by it of Trials by *Iriſh* Juries in their native Country, than for *Iriſh* Peers alone; which Trial here againſt *Iriſh* Commons, was never of late excepted againſt, this Law having been ſo often adjudged to reach to them: Therefore there is no Colour to exempt *Iriſh* Peers out of it.

3. This pretended Prejudice to *Iriſh* Peers, in point of Trial by their Peers, is ſolely in Caſes of High-Treaſon, or Miſpriſion and Concealments of it, and no other, the Statute extending to no Crimes, but theſe alone: Therefore the Miſchief is not great in general; and no *Iriſh* Peers, I preſume, but ſuch who have traitorous or diſloyal Hearts, will deem it a Diſparagement, or Injuſtice to them, to be ſecluded of a Trial by their Peers, only in theſe Caſes of High-Treaſon: And if others, who are profeſſed Rebels and Traitors, murmur at it, (as none elſe will) we need not much regard it, nor prefer their pretended Privilege, before our own Kings, Kingdoms, Religions, yea, *Ireland*'s Safety and Welfare, in bringing them to a ſpeedy Trial and condign Puniſhment for their Treſons here in *England*, by vertue of this Law.

4. Even by the very Common Law, before this Act, Treaſons committed in *Ireland* by Peers or Commons, were triable before the Marſhal of *England*, in *England* itſelf, as is evident by the Parliament Roll of 2 *H.* VI. p. 9. (*d*) where *John* Lord *Talbot*, being the King's Lieutenant in *Ireland*, accuſed *James Bottiler*, Earl of *Ormond*, of certain Treaſons (there particularly recited) by him committed in *Ireland*, before *John* Duke of *Bedford*, Conſtable of *England*, in his Marſhal's Court; which Accuſations the King, by the Advice of his Parliament, did diſcharge and aboliſh, to appeaſe the Differences between them: Upon which elſe he might have been proceeded againſt, though an *Iriſh* Peer, without any Trial by his Peers (ſee *Cook's* 4 *Inſtit.* p. 123, 124.). Therefore *a fortiori* this ſpecial Act of Parliament may ſubject *Iriſh* Peers to a Trial by a ſubſtantial *Engliſh* Jury in *England*, for Treaſons done in *Ireland*, ſince triable for them here before its making even in the Marſhal's Courts.

5. This Statute doth not ſimply take away the Trial of all Treaſons committed in *Ireland*, from thence, only it makes them all triable here, when

(*a*) *Co.* 2 *Inſtit. Proem.* (*b*) See *Horn's Mirror of Juſtices*, p. 314, 315. (*c*) See an exact Abridgement of the Records, p. 372, 379, 380.
(*d*) See an exact Abridgement, p. 567, 568. *Cook's* 4 *Inſtit.* 123, 124.

the King, State, and Parliament ſhall ſee juſt Cauſe or Occaſion for Trial of them here, as now they do in theſe Times of general Rebellion there, when the Rebels are ſo predominant, and the Times ſuch, that no ſafe, fair, or indifferent Trial of this Traitor, can be there had or expected: And ſeeing the Law and common Reaſon will inform every Man, that the King and State will never be at the Coſt and Trouble to ſend for Traitors and Witneſſes out of *Ireland*, to try them here, but upon a moſt juſt Occaſion, and urgent Neceſſity, to prevent either a Failure or Delay of Juſtice, in Caſe of horrid Treaſons and Rebellions: And no *Iriſh* Peer, who hath any Loyalty in his Heart, or Reaſon in his Head, will deem it a Diſhonour or Prejudice to the whole *Iriſh* Peerage in general, or the traitorous Peers, ſent hither to be tried, in particular, to be outed of a Trial by *Iriſh* Peers, in ſuch Caſes of Neceſſity, and Expediency only; it being better and ſafer for this Realm, and *Ireland* too, that theſe native *Iriſh* Peers, who have been proved to break out into actual Rebellion, in all Ages, (as this Priſoner's Anceſtors have done, as much, or more than any, his *(a)* Grandfather being the firſt Man that broke forth in *Tyrone*'s Rebellion) ſhould be ſubject to Trials for the ſame, by ordinary *Engliſh* Juries here, and outed of their Peerage, than that ſuch Arch-Traitors and Rebels, as the Priſoner and his Confederates are, (guilty of the Effuſion of many Thouſands of *Proteſtants* and *Engliſhmen*'s Bloods) ſhould eſcape uncondemned, or be executed by Martial Law. And our Law, in this Caſe, which concerns the Safety of two Kingdoms at once, will rather ſuffer a particular Miſchief, eſpecially to rebellious Peers, than a general Inconvenience to both Realms, and all loyal Subjects in both.

6. Though the Trial of all *Engliſh* and *Iriſh* Peers, by a legal Indictment, Preſentment, and Jury of their Peers alone, and not by Martial Law, or Commiſſioners themſelves alone, be an eſſential, fundamental Right and Privilege, for the Security of their Lives and Eſtates, which our Parliaments, in all Ages, have been very curious to preſerve, and not to alter; yet the Trial of Peers by Peers alone, (not by a Jury of other Freemen) for the moſt Part, (if rightly conſidered) is rather a mere Punctilio of Honour, than Matter of real Privilege or Benefit to Peers; and by Intendment of Law and common Experience, a fair and legal Trial, by the Oaths of twelve honeſt, ſubſtantial, indifferent *Engliſh* Gentlemen, or Freeholders, to whom the Priſoner may take all ſorts of lawful Challenges by Law *(b)*, which ſhall be allowed, if there be any juſt Cauſe of Suſpicion of Partiality, Injuſtice, Conſanguinity, *&c.* beſides his peremptory Challenge of thirty-five Jurors, without Cauſe, (which Challenges, *(c)* *Cook* affirms, ſhall not be admitted, or granted, in caſe of Trial by Peers) it being the uſual, ancient *(d)* Trial, in all Caſes between the King and ordinary Subjects, between Man and Man, Peers and Commoners, both in all Civil and Criminal Cauſes whatſoever, it is, and will be every way as juſt, as beneficial to a Peer, in point of Law, as a Trial by Twelve Peers, upon their Honours only, *(e)* without Oath: And the Exchange only of the Form of Trial, by twelve indifferent *Engliſh* Gentlemen of Quality, upon their Oaths, for twelve *Iriſh* Peers of *Engliſh* Blood, nominated and appointed only by the King, or his *(f)* Lord Deputy of *Ireland*, upon their Honours, without Oath, in this Caſe of Neceſſity, can be no Injuſtice, Injury, or Prejudice to the *Iriſh* Peers in general, nor yet to the Priſoner in particular: The rather, if we conſider,

1. That every Indictment, by which an *Engliſh*, or *Iriſh* Peer, is, or can be tried, muſt firſt be proved before a Grand Jury of Commons, (as this very Statute preſcribes) and found by them upon Oath, not by a Jury of Peers, which is a kind of preparatory Trial of a Peer by Jury, without which there can be no proper Trial by Peers, as is reſolved, *Cook*'s 3 *Inſtitute*, p. 28, 30, 31, 32. and 1 *H.* IV. 1.

2. That in Caſes of Appeal *(g)* brought by a common Perſon for Murder, Rape, Robbery, or the like, and likewiſe in caſe of a Premunire againſt an *Engliſh* Peer, where his Life is not brought into queſtion, he ſhall not be tried by his Peers, but by an ordinary Jury as other Men; Trial of Peers by Peers being only in Caſes of Indictments for Treaſons or Felonies at the King's Suit, and no other; as is clear by the Statute of *Magna Charta*, ch. 29. *Neither will we paſs upon him, or condemn him, without the lawful Judgment of his Peers*, &c. the Words only of the King, not of the Commons: In this our Books are expreſs in point, all cited in Sir *Edw. Cook*'s 2 Inſtitute on this very Chapter of *Magna Charta*, ch. 29. in his *Pleas of the Crown*, or 3 Inſtit. c. 2. p. 30, 31. & 20 *Ed.* IV. 6. *b.* Now this Caſe in queſtion concerning not only the King, but the whole Kingdom of *England* and *Ireland*, and thoſe many Thouſands of common Perſons whoſe innocent Blood hath been ſhed in *Ireland* by him and his confederate Rebels, crying out for Vengeance and Juſtice againſt him without Delay; he may thereupon be juſtly tried by an ordinary Jury of Commons, as well as in caſe of an Appeal of Murder brought by a common Perſon.

3. Peers of Parliament, even of this Realm, not by inherent Nobility and Birth-right, but only in right of their Baronies, which they hold in *auter Droit*, as Archbiſhops, Biſhops, Abbots, Priors, and the like, ſhall not be tried by their Peers for Treaſons or Felonies at the King's Suit, but only by an ordinary Jury; as Archbiſhop *Scroope* of *York*, *Cranmer* Archbiſhop of *Canterbury*, *(h)* *Adam de Orton*, or *Tarlton*, Biſhop of *Hereford*, *Mark* Biſhop of *Carliſle*, *Fiſher* Biſhop of *Rocheſter*, and others were tried, 3 *Ed.* III. *f.* 6. *Kelway's Reports*, *f.* 184. *Stamford's Pleas of the Crown*, *f.* 135. *Crompton's Juriſdiction of Courts*, *f.* 12, 19. *Hall's Chron.* 6 *H.* IV. *f.* 25. *Co.* 3 *Inſt. f.* 36. Now if theſe very *Engliſh* Peers, to whom *Magna Charta* was immediately granted by Name of Archbiſhops, Biſhops, Abbots (being the firſt Perſons mentioned in the Prologue and ch. 1 and 29 of this Charter), ſhall be outed of their Peerage in theſe Caſes of Indictment at the King's Suit, though within the very Letter of *Magna Charta*, becauſe they are no Peers of *England* by Blood or Birth-right, but in right of their Churches, then, *a fortiori*, *Iriſh* Peers ſhall be deprived of their Peerage by this ſpecial Act, who are not within the Letter or Intent of *Magna Charta*, never made for them, but for *Engliſh* Noble Blood. And if it be neither Injuſtice, nor Injury, nor Inconvenience, to deprive theſe Eccleſiaſtical *Engliſh* Peers of a Trial by Peers in Caſes of Treaſon or Felony at the King's Suit, though within the Letter of *Magna Charta*, and to try them by an indifferent Jury of Freeholders; it cannot be reputed any Injuſtice, Injury, Prejudice, or Inconvenience at all now to out this *Iriſh* Peer of his Peerage here, where he is no native Peer, for ſuch a horrid Treaſon as this.

4. *Iriſh* Peers are no Peers at all in *England*; upon which Account and Reaſon if they commit Treaſon here, they ſhall be tried by an ordinary Jury: Therefore to try them only by Freeholders, not by Peers, in *England*, can be no Injury nor Diſhonour to their Peerage, unleſs it were in *Ireland* where they are Peers; and yet have been ſeldom or never hitherto tried there by their Peers, as I have proved.

5. The very Statutes of *Ireland* itſelf, made by the Peers and Commons thereof to prevent many Miſchiefs by Thieves, Murderers, and Rebels in that Realm, do deprive both the Lords and Commons there of any legal Trial at all both for their Lives and Eſtates too; Witneſs the Statutes 28 *H.* VI. c. 1. 3 & 5 *E.* IV. *c.* 12. and expoſe them to the Judgment, Slaughter, and Plunder of particular Men, in ſome Caſes, authorizing "all Manner of Men that find any Thieves robbing, breaking up "Houſes by Day or Night, or going or coming to rob or ſteal, having no "faithful Man of good Name and Fame in their Company, in *Engliſh* "Apparel, to take and kill thoſe Thieves (though Peers), and cut off their "Heads (without Indictment or Jury), and ſeize their Goods, without "any Impeachment of the King, his Heirs, Officers, or any other, for "which they are to receive a Sum of Money from every Plow-land and "Perſon of Eſtate within the Barony where they ſhall ſlay and behead "ſuch Thieves." And 25 *H.* VI. c. 4. & 5. "If any *Engliſhman* ſhall "have any Hair or Beard upon his upper Lip like the *Iriſh*, it ſhall be "lawful for every Man to take their Goods, as *Iriſh* Enemies, and to "ranſom them as Enemies: And if any *Iriſh* Enemies received to the "King's Allegiance, ſhall afterwards rob, ſpoil, and deſtroy the King's "liege People, it ſhall be lawful for every Leigeman that may meet with "him afterwards, to do with him, and his Goods and Chattels, as to "Enemies who were never liege, and to ranſom them at their free Will, "without any Impeachment of the Law." And ch. 6. "If any Men, "except Knights and Prelates, ſhall wear gilded Bridle, Peytrels, or other "Harneſs, that it ſhall be lawful to every Man that will to take the ſaid "Man, his Horſe and Harneſs, and to poſſeſs the ſame as his own Goods, "without Indictment or legal Trial." All which would be monſtrous in *England*. Therefore it is much more legal and juſt, and no Injury at all, to try the Priſoner, an Arch-Rebel, in *England (i)*, in the Time of War and Combuſtion in *Ireland*, for his Treaſons there perpetrated, by an indifferent, honeſt, lawful, *Engliſh* Jury, upon an Indictment found by the grand Inqueſt, than thus to kill or behead ſuch Malefactors in *Ireland*, and ſeize both them and their Goods as Enemies, and ranſom them at

(a) See *Cambden*'s *Ireland*, p. 111, 120, 121, 199.

(b) See *Stamf.* l. 3. c. 7. 7 *H.* VII. 12. *Brook*'s Challenge, 217. *Fitzh. Statham*'s and *Brook*'s *Abridgement*, and *Aſh*'s Table, Title Challenge.

(c) See *Cook*'s 3 *Inſtit.* p. 27. *(d)* See *Fitzh. Brook*, *Aſh*, Title Jurors, Trial Inqueſt.

(e) 1 *H.* IV. 2. 27 *H.* VIII. 22. & 13 *H.* VIII. 11, 12. *Brook*'s Treaſon, 29, 33. 10 *E.* IV. 6. *Cook*'s 3 *Inſtit.* p. 28, 29. 2 *Inſt.* p. 49. *(f)* 2 *Eliz.* c. 1. & 6.

(g) Mr. *Prynne* in his Preface to this Argument ſays, That *Errors* themſelves in the Courts of *Ireland*, with other Grievances, could not antiently be redreſſed in the Parliaments thereof, but only in *England*, till 29 *Ed.* III. as is evident by this memorable hitherto unprinted Record made for Relief in ſuch Caſes. Crook's 1 *Rep. m.* 14 *Car. p.* 511, 512.

Clauſ. 39. *E.* III. m. 12. De erroribus corrigendis in Parliamentis tenendis in *Hibernia: Rex, Juſticiario & Cancellario ſuis* Hiberniæ, *ſalutem. Ex parte nonnullorum fidelium noſtrorum Communitatis terræ noſtræ* Hiberniæ, *Nobis eſt graviter conquerendo, monſtratum, ut cum ipſi dampna & gravamina quamplurima à magno tempore ſuſtinuerint ex hoc, quod ipſi terras & tenementa ſua in manum noſtram per miniſtros noſtros terræ prædictæ, cum nomine diſtrictionis, cum ex cauſa tranſgreſſionis, ſive alienationis ſine licentia noſtra factæ, voluntariè & abſque caſu rationabili capta, extra manus noſtras, licet ritè & proceſſu debito inde penes vos & alios de Conſilio noſtro in partibus illis, juxta legem & conſuetudinem terræ prædictæ proſecuti fuiſſent recuperare non poſſent.* (See Pat. 8. *Johan.* Regis, m. 1, 2. Pat. 9. *Johan.* Reg. m. 4. n. 26.) *Et etiam ex hoc*, quod *Errores* qui in Recordis & Proceſſibus placitorum coram Juſticiariis noſtris & aliis Curiis & Placitis in eadem terra, quæ Recordum habent, habitis, & in redditionibus judiciorum & placitorum eorundem interveniſſe prætendantur *in Parliamentis in eadem terra corrigi nequeunt*, nec alias juſticia inde fieri *ſine remedio in* Anglia *quærendo; propter quod, quidam propter labores & expenſas circa præmiſſa oppoſitas ad maximam miſeriam & inopiam deducuntur, & quidam omnino exhæredati exiſtunt; unde iidem fideles noſtri Nobis cum inſtancia ſupplicarunt, ut ſuper præmiſſis remedium congruum apponi faciamus.* Et quia videtur Nobis & Conſilio noſtro *durum eſſe & grave*, quod conquerentes ſuper affectione Juſticiæ de injuriis ſibi illatis in partibus prædictis, taliter abſque remedio fatigerentur; *per quod pro quietè, & indempnitate populi noſtri in terra prædicta ſub noſtro regimine exiſtentis*, cui in exhibitione Juſticiæ ſumus debitores; ordinavimus, *quod de omnibus terris & tenementis in terra prædicta per Juſticiarios, Eſceatoros, ſeu quoſcunque alios Miniſtros noſtros, ſub Sigillo noſtro in manum noſtram captis, illis qui pro eiſdem terris & tenementis extra manum noſtram debito & juſto proceſſu coram vobis proſequi voluerint, ſuper hoc plena Juſticia* ſecundum legem & conſuetudinem terræ noſtræ *Angliæ*, & dictæ terræ noſtræ *Hiberniæ* fiat, *quibuſcunque mandatis noſtris ſub magno vel privato Sigillo noſtro* Angliæ, *vobis aut aliis Miniſtris in terra prædicta ante hæc tempora directis, non obſtantibus.* (See 2 *E.* III. c. 8. 18 *E.* III. Stat. 3. 20 *E.* III. c. 1. 2 Clauſ. 5 *E.* III. part 1. m. 27. 1 *R.* II. n. 96. 2 *R.* II. n. 51. Clauſ. 20 *E.* III. part 1. dorſ. 13.) *Et quod ad proſecutionem omnium & ſingulorum qui conqueri voluerint* Errores in Recordis vel Proceſſibus *coram aliquibus Juſticiariis, ſeu aliis Miniſtris prædictis, interveniſſe, Rotuli eorundem Recordorum & Proceſſuum* in Parliamentis noſtris in eadem terra tenendis, *per Juſticiarios ſeu Miniſtros, coram quibus Recorda & Proceſſus illa fuerint, deferantur*; & ibidem eadem Recorda & Proceſſus diligenter recitentur & examinentur, & errores ſi quos in eiſdem invenire contigerit, debite corrigantur. Et ideo *Vobis mandamus, quod* Ordinationem *prædictam in terra noſtra prædicta teneri, & partibus conquerentibus plenam & celerem Juſticiam fieri faciatis in forma prædicta, quibuſcunque mandatis vobis aut aliis in terra prædicta ante hæc tempora in contrarium directis, non obſtantibus. Ita quod aliquis materiam non habeat Nobis pro defectu Juſticiæ, ſuper caſibus prædictis, de cætero conquerendi. Teſte Rege apud* Weſtm. 30 *die* Auguſti. Per ipſum *Regem & Conſilium.*

(h) *Godwin*'s *Catalogue of Biſhops*, p. 232, 233, 605, 606.

(i) Mr. *Prynne* in his Preface to his Argument ſays, I ſhall here inſert one pertinent *Record*, to manifeſt that the trying of *Iriſh* Malefactors in *England*, the binding them to appear, the Recording their Defaults, and giving Judgment againſt them for not appearing here for Murders, Robberies, and Felonies, committed or acted by them in *Ireland*, is no Novelty (having omitted it in my Argument), it being in uſe in the ninth Year of King *John*, as this Patent manifeſts.

Rot. Pat. Ann. 9 *Johan.* Reg. m. 4. n. 46. *Rex*, M. *filio* Henrici, *Juſticiario* Hiberniæ, *ſalutem. Mandamus vobis, quod deduci faciatis ſecundum judicium Comitis* Dublin, Galfredum de Mariſco *& alios qui rectati ſunt de incendio, & roberia, & morte hominum, & aliis rectis quæ pertinent ad Coronam noſtram*, unde eis dies datus eſt coram nobis in *Anglia, a die ſancti Michaelis ad* 15 *dies*, ad quem non venerunt, nec pro ſe reſponſales miſerunt, & abſentiam ſuam die illo Attornatis eis in defaltam. *Et ipſos deduci faciatis ſecundum judicium prædicti Comitis* de vita & membris & obſidibus, & vadiis, & plegiis. *Teſte meipſo apud* Theoukeſbury, 12 *die* Novembris.

pleaſure,

pleaſure, without Trial, Jury, or Indictment, and not only to indemnify but reward thoſe that do it, by Laws there made by the *Engliſh* and *Iriſh* themſelves; which will anſwer all Objections, and wipe off the leaſt Shadow of Injuſtice in this Caſe and Trial.

The third Objection is this, That if *Iriſh* Peers had been within this Law, there being ſo many Rebellions in *Ireland* ſince its enacting, we ſhould have had ſome Precedents of *Iriſh* Peers here tried by Jury ere this: But there is no ſuch Precedent extant; therefore certainly *Iriſh* Peers, for Treaſons perpetrated in *Ireland*, are out of this Act.

To this I anſwer, 1. That no *Iriſh* Peers have been tried by their Peers in *Ireland* for Treaſons ſince this Act; *ergo* they are within it.

2. That this Argument is merely fallacious, and non-concludant; for the Reaſons why no *Iriſh* Peers have been tried here ſince this Law by virtue of it, is not becauſe they were not deemed within it, but for other Reaſons.

1. Becauſe moſt of the *Iriſh* Peers who have been in actual Rebellion ſince this Law, were *(a)* either actually ſlain in the Wars, or fled the Kingdom, or elſe were received into Grace, and pardoned before Trial upon their Submiſſions; or elſe attainted and executed by Act of Parliament, or by Martial Law in *Ireland*. And by theſe means only avoided their Trials here.

2. Becauſe ſome *Iriſh* Rebels, as great as *Magwire*, or any of their Peers in Power and Eſtate, have been heretofore tried and executed for Treaſons in *England* by virtue of this Law, though brought over hither from *Ireland* againſt their Wills; as *Orourk* and Sir *John Perrot* of old, and *Mac-Mahon* the laſt Term; and the Trials of theſe three here are direct Precedents in Point, and good Warrant by this very Act for the Trial alſo of this *Iriſh* Peer, as I have proved.

3. This Statute is not very ancient, yet ſtill in as full Force as ever; and if this be the firſt Precedent of an *Iriſh* Peer that came judicially in queſtion here in *England*, to be tried upon it ſince its making, it is no Argument he is out of this Law, but rather an Inducement to make him a leading Precedent to thoſe rebellious Peers of that Nation, who have been the Ringleaders of the ordinary Commons there in this grand Rebellion, there being no Precedent, Judgment, nor ſolid Reaſons againſt it; yea ſome Judgments in caſe of *Iriſh* Commons, and many unanſwerable Reaſons, for it.

The fourth Objection is, The Opinion of the Book in *Dyer*, f. 360. 1. forecited, recited in *Compton's Juriſdiction of Courts*, f. 23. a. and Mr. *St. John's Argument at Law at* Strafford's *Attainder*, That an *Iriſh* Peer cannot be tried here in *England* for Treaſon done in *Ireland*, neither by his Peers, nor by a Jury; becauſe he is no Subject of *England*.

To this I have already given an Anſwer, and ſhall here only add, 1. That the only Reaſon given in the Book hath been ſince ſeveral times adjudged to be no Reaſon at all nor Law by all the Judges of *England*, a Subject of *Ireland* being a Subject of the King of *England* in all Places, as is adjudged in *Calvin*'s Caſe, and that *Wrey* diſclaimed any ſuch Opinion delivered by him as is there reported. Therefore the Reaſon of this Opinion being adjudged erroneous, and no Law, the Opinion itſelf grounded on it muſt needs be ſo too; the rather, becauſe the Opinion there cited was upon a Caſe caſually put and moved out of Court by way of Diſcourſe, without Study or Argument, and ſuddenly delivered only by *Dyer* and *Gerrard* (ſince *Wrey* diſclaimed it), but not given upon any Cauſe actually depending or debated and argued in Court. 2. That it is a full Authority for me, both becauſe it determines there can be no Trial of an *Iriſh* Peer by his Peers in *England* but only by a Jury; and that in *Ireland* itſelf Peers are not uſed to be tried by Peers, but attainted by Act of Parliament; therefore an Authority point-blank againſt the Priſoner's Plea.

The fifth Objection is, *Orourk*'s Caſe; which in Judge *Anderſon*'s own Book of Reports is put thus: Whether *Orourk*, an *Iriſh* Subject (and no Peer or Baron of *Ireland*) might be tried by this Act here in *England* for Treaſons committed in *Ireland*? Which Words *(nient eſteant un Peer ou Baron de* Ireland) in the putting of the Caſe ſeem to intimate, that in that Caſe the Opinion of the Judges was, That an *Iriſh* Peer was not within this Act.

To which I ſhall return this brief Anſwer, That this Clauſe, Not being a Peer or Baron in *Ireland*, in the putting of that Caſe, was only a Deſcription of the Quality of his Perſon, he being no Peer or Baron of that Realm, not any Point in or Part of the Caſe, there being not one Syllable in the whole Debate or Argument of it, by way of Admiſſion, or otherwiſe, that an *Iriſh* Peer was not within this Act: And in this very Caſe the Judges reſolved the Book in *Dyer* to be no Law, and *Wrey* diſclaimed any ſuch Opinion of his therein reported, as Sir *Edward Cook*'s Inſtitutions on *Littleton*, fol. 261. b. record.

The ſixth Objection is this, (intimated in an Order of the Lords Houſe) That this may much concern the Peers of *England*; for this Law for trying foreign Treaſons is enacted in *Ireland*; and ſo by Colour of it *Engliſh* Peers may be ſent over into *Ireland*, to be tried there by a Jury of *Iriſh* Commoners, for Treaſons done in *England*, as well as *Iriſh* Peers ſent thence to be tried by ordinary Juries here in *England* for Treaſons committed in *Ireland*.

I anſwer, 1. That there is no ſuch Law extant in *Ireland*, that I can find, among all their printed Statutes; ſo as this is a vain Surmiſe.

But, 2. If there were any ſuch Law there, yet *England* being the ſupreme Realm to *Ireland*, may make Laws in the Parliament here to bind the *Iriſh* Peers and Commons; but the Parliament in *Ireland*, being a *(b)* ſubordinate Realm to *England*, never yet did, nor can make any Laws at all to bind any *Engliſh* Peers or Commons for things done in *England*, until the Rebels there ſhall be able to conquer *England* (which I hope they never ſhall), as we have conquered them. Therefore we need not fear any ſuch obliging Laws of theirs, or the Trial of *Engliſh* Peers in *Ireland*. So as this vain Fancy is quite out of doors, and the Lords themſelves, upon Conference with the Commons, have been fully ſatisfied that this Caſe no ways concerneth the Peers of *England*, whoſe Trial by their Peers is by direct Proviſo ſaved to them in this act; and therefore cannot come in queſtion, or be taken from them by Pretence of any ſuch Law eſtabliſhed in *Ireland*: Whereupon they have reſerved their Order, which ſeemed to give ſome Colour for this Objection.

Pat. 48 *H.* III. pars 1. m. 8. I find this memorable Record: "Rex, *&c.* "omnibus ſalutem. Cum ſecundum conſuetudinem hactenus in *Hibernia* "obtentam, Utlagati in Regno noſtro *An liæ* pro Utlagatis in *Hibernia* "haberi non conſueverunt, et *Gregorius le Somner*, ratione Utlagariæ in "ipſum promulgatæ in regno noſtro *Angliæ*, nuper captus fuit in *Hiber*-"*nia* et in *Angliam* reductus et impriſonatus; Nolumus quod fidelibus "noſtris *Hiberniæ* aliquod præjudicium ex hoc in poſterum gravetur. In "cujus, *&c.* Teſte Rege apud Turrim *London*, 26 die *Junii*." If *Engliſhmen* outlawed in *England*, could not by the Law and Cuſtom of *Ireland* be taken upon a *Capias Utlagatum* in *Ireland*, or reputed as outlawed Perſons there, as this Patent reſolves, much leſs can they there be tried for any Treaſons acted in *England* by colour of this Law, nor can our *Engliſh* Peers be there tried for Treaſons here by an *Iriſh* Jury.

A ſeventh Objection, which I have heard made by ſome, is as vain and abſurd as the former; That if *Iriſh* Peers be within this Act for Treaſons done in *Ireland*, then by the ſame Reaſon Peers in *Scotland* might be ſent for and brought into *England*, and there tried by an ordinary Jury by virtue of this Law, for Treaſons done in *Scotland*; which would be a great Prejudice to the Peers of *Scotland*, and the Privileges of that Kingdom.

I anſwer, 1. That this Act extends not to any Treaſons of *Scots* Lords or Commons committed or acted in *Scotland*, and triable there, though it reach to *Iriſh* Lords and *Ireland*.

1. Becauſe this Act was made long before the Union betwixt *England* and *Scotland*, by 1 *Jac.* c. 2. 3 *Jac.* c. 3. 4 *Jac.* c. 1. & 16 *Caroli*; whiles that *Scotland* was under the abſolute and immediate Power of its own Kings, and not of the Kings of *England*; and ſo it cannot extend to them.

2. *Scotland*, although the *(c)* Kings of it have often done Homage to the Kings of *England* in ancient Times (as their Sovereign Lords), was ſtill an abſolute, independent Kingdom in this reſpect of being ſubject only to, and governed by its own Parliaments and Laws; but not ſubordinate to, nor governed by the Laws or Parliaments of *England*, which never bound them heretofore, nor now, as they did and do *Ireland*; their Laws and Statutes and ours ſtill continuing different. Therefore this Act neither did nor could bind the *Scots* Peers or Commons in Point of Trial here for Treaſons committed in *Scotland*, as it binds the *Iriſh* (ſtill ſubject to our Laws and Parliaments) for Treaſons done in *Ireland*.

3. The very Acts of Pacification *(d)* between both Kingdoms, and the Solemn League and Covenant paſſed this Parliament here and in *Scotland* too (which do eſpecially reſerve the Trials of all Traitors and Delinquents of their Kingdom to the Trial and Judicatory only of their own Parliaments and Realms), have for ever provided againſt this vain Pretence, and ſecured not only all *Scottiſh* Peers, but Commoners too, againſt any Trials here by virtue of this Act for Treaſons done in *Scotland*; therefore I ſhall give it no further Anſwer.

The laſt Objection I can think of is this; That in every Caſe of Treaſon or Felony new made by Statute, the Lords of Parliament in *England* ſhall have their Trial by their Peers ſaved, notwithſtanding the Statute provides not for it by expreſs Words; ſo that Proviſo's of Trial by their Peers inſerted into them in ſuch Caſes are but idle, and *ex abundanti*, becauſe it is provided for both by the Common Law, and by *Magna Charta* itſelf, c. 29. and ſo was it adjudged in the Caſe of the Lord *Hungerford* heretofore, and in the Earl of *Caſtlehaven*'s Caſe of late for Buggery, upon the Statute of 25 *H.* VIII. c. 6. *Stamford's Pleas of the Crown*, f. 152, 153. & *Crompton's Juriſdiction of Courts*, f. 29. Therefore the Trial of *Iriſh* Peers by their Peers ſhall be likewiſe ſaved to them within this Act, tho' it be not expreſſed, as well as the Trial by Peers is to *Engliſh* Peers by expreſs Proviſo.

I anſwer, firſt, That this Rule holds generally true in all Caſes of new Treaſons and Felonies where the Offences only are made capital, or puniſhable according to the ancient, uſual, and ordinary Proceedings of Law, and the Manner of the Trial of them left at large, and not preciſely limited how and by whom they ſhall be tried; as they are in the objected Caſes upon the Statutes of 25 *H.* VIII. c. 6. & 5 *Eliz.* ch. 17. concerning Buggery; where the Words are, "That this Vice ſhall be adjudged Fe-"lony, and that ſuch Order and Form of Proceſs ſhall thereupon be uſed "againſt the Offenders, as in Caſes of Felony at the Common-Law, and "that the Offenders being thereof convicted by Verdict, Confeſſion, or "Otlawery, ſhall ſuffer Pain of Death, *&c.*" Which Words, without the leaſt Contradiction, ſtand as well with Trial of Peers who are guilty of it by their Peers alone, as of Commons by a Jury, they being both according to the Order of our Common-Law, and a Verdict by Peers is as properly ſtiled a Verdict in Law, as a Verdict by Jury; Witneſs 1 *H.* IV. 1. and *Cook's* 3 *Inſtit.* ch. 2. p. 30. But in the Statute of 35 *H.* VIII. there is no Creation or Introduction at all of any new Treaſons, but only an Introduction of a new Form and Way of Trial for Treaſons formerly made and declared ſuch, then done, or hereafter to be committed out of this Realm, and that new Form of Trial preciſely limited in all Particulars, and eſpecially enacted to be by an ordinary Jury, except only in caſe of our *Engliſh* Peers: Therefore this Statute comes not at all within the Objection, becauſe it particularly defines the Place where, the Judges before whom, the Juries by whom, with the whole Form and Manner how ſuch foreign Treaſons ſhall be tried, with all other Circumſtances of the Trial; and expreſly preſcribes, That all but *Engliſh* Peers indicted for foreign Treaſons, ſhall be tried by good and lawful Men of the Shire where the King's-Bench or Commiſſioners ſit. Therefore to alter this Form of Trial, preciſely preſcribed by this Statute, by introducing a new Trial by *Iriſh* Peers, is to run quite croſs againſt, elude, and repeal this Statute, as I have argued and proved at large.

(a) See the *Annals of* Ireland, and Mr. *Cambden* in *Ireland*, p. 121 to 290. *(b)* See *Croke's Rep.* p. 264, 511, 512.
(c) See *Hov.* p. 545, 546, 550. *Walſingham Hiſt. Ang.* p. 48 to 56. *Mat. Paris Hiſt. Ang.* p. 417, 433, 666, 667. 29 *E.* I. Rot. Clauſ. dorſ. 10 clauſ. 33 *E.* I. dorſ. 13. ſcedula clauſ. 34 *E.* I. dorſ. 10 clauſ. 10 *E.* III. dorſ. 9. *(d)* 1 *Jac.* c. 2. 3 *Jac.* c. 3. 4 *Jac.* I.

I have now quite done with my Argument of this new untroden Case; and I hope therein sufficiently manifested, that this Plea of the Prisoner is invalid, and such as ought to be over-ruled in Point of Law: And therefore as he hath been sent for over from *Ireland*, by the Wisdom and Justice of our Parliament, and by the Lords, Justices, and Council there transmitted hither, to receive a just and speedy Trial at this Bar for his bloody Treasons, which there (in respect of the Rebels Power, Tumults in that Realm) he could not conveniently undergo; so I humbly pray on the behalf of the King, Kingdom, Parliament, and our whole *English* Nation, to all which he hath been such a capital Traytor and Enemy, That this Plea of his may presently be over-ruled, and himself brought to his speedy Trial, Judgment, and Execution, for his unparalleled Treasons, and the Blood of those many thousands of innocent *English* Protestants shed in *Ireland* upon this Occasion, which cries for Justice and Execution against him without further Delay; the rather, because *nulli differemus Justitiam* is one Clause of that very Act of *Magna Charta*, ch. 29. which he hath pleaded in Bar of his Trial, of which I pray both he and the whole Kingdom may now enjoy the Benefit, by his undelayed Trial and Execution too, in case he shall be found guilty of the Treasons for which he stands indicted; of which there is little Doubt, since so fully confessed by himself in a Writing under his own Hand; and we are ready to make them good against him, as we have already done against his Confederate *Mac-Mahon*, by the Testimony of a Cloud of honourable, pregnant Witnesses, in case he shall deny it.

After two Arguments at the Bar on both Sides of this Case, Justice *Bacon* argued it himself, and delivered his Opinion and Judgment against the Prisoner's Plea, That though he be a Baron of *Ireland*, yet he was triable for his Treason by a *Middlesex* Jury in the *King's-Bench*, and outed of his Peerage, by 35 *H.* VIII. c. 2. Which Judgment was approved by this Order of both Houses of Parliament.

Die Lunæ, 10 Februarii, 1644.

Ordered by the Lords and Commons in Parliament assembled, That the said Houses do approve of the Judgment given by Mr. Justice Bacon, *in over-ruling the Plea of the Lord* Magwire, *and of the Manner of the Trial by the Indictment of High Treason in the* King's Bench: *And the Judge is hereby required to proceed speedily thereupon according to Law and Justice.*

John Brown, *Cler. Parl.*
Henry Elsing, *Cler. Parl. D. C.*

Upon which, on *Monday*, *Febr.* 10, 1644. he was brought from the *Tower* of *London* to the *King's-Bench Bar*, and there arraigned; where putting himself upon his Trial, he challenged twenty-three of the Jury, which appeared, peremptorily: Whereupon a *Distringas* was awarded to the Sheriff of *Middlesex* to return *Quadraginta tales* the next Day; of whom he challenged twelve more peremptorily: And being tried by twelve of the residue returned (against whom he had no legal Exception nor Challenge), he was upon his own Confessions and pregnant Evidence of fifteen Witnesses (Persons of Quality) found guilty of the Treasons for which he was indicted; and thereupon *Febr.* 11. was adjudged to be drawn to *Tyburn*, and there hanged by the Neck, and cut down alive, and then his Bowels to be taken out, and there burnt before his Face, his Head to be cut off, and his Body to be divided into four Quarters, and then to be disposed as the Parliament shall appoint. Which was accordingly executed the 20th of *February*.

At the End of the Argument Mr. *Prynne* says thus:

To fill up the vacant Pages of this Sheet, I shall annex this one Record, and also one *Irish* Act, being both very pertinent to my Argument.

Pat. I. *E.* I. m. 20. *Hibernia.*

Venerabili in Christo Patri eadem gratia *Midden* Episcopo, & dilectis & fidelibus suis *Mauricio* filio *Mauricii* Justiciario suo *Hibern.* & Magistro *Johanni* de *Saumford*, Esceatori suo *Hibern.* salutem. Cum defuncto jam celebris memoriæ Domino *H.* Rege Patre nostro (cujus animæ propicietur altissimus) ad nos Regni *Angliæ* gubernacul. & terræ *Hibern.* Dominium pertineant, ob quod Prælati, Comites, & Proceres, ac Communitas Regni nostri nobis tanquam Domino suo ligio & Regi fidelitatis Juramentum & omnia alia quæ nobis ratione Coronæ & Dignitatis Regiæ ab ipsis fieri & præstari nobis, in absentia nostra, poterunt plenarie & sine omissione aliqua prompto & libenti animo præstiterint: Ac Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, Milites, libere tenentes, ac tota communitas terræ nostræ *Hiberniæ* nobis tanquam Regi & Domino suo ligio consimile sacramentum fidelitatis præstare teneantur. Dedimus vobis potestatem recipiendi nomine nostro fidelitatem ipsorum. Ita tamen quod si vos omnes interesse nequiveritis, tunc duo vel unus vestrum qui præsens fuerit nichilominus plenariam habeat potestatem recipiendi nomine nostro fidelitatem ipsorum in forma prædicta. Et ideo vobis mandamus, quod fidelitatem prædictam nomine nostro recipiatis, prout melius videbitis expedire. In cujus, *&c.* Dat. per manum *W. de Merton Canc.* apud *Westm.* 7. die *Decembris.*

33 *H.* VIII. c. 1. made in *Ireland.* *

An Act that the King and his Successors shall be Kings of *Ireland.*

FOrasmuch as the King our most gracious dread Sovereign Lord, and his Grace's most noble Progenitors, Kings of England, have been Lords of this Land of Ireland, having all manner of Kingly Jurisdiction, power, pre-eminences, and Authority Royal belonging or appertaining to the Royal Estate and Majesty of a King, by the Name of Lord of Ireland, where the King's Majesty, and his noble Progenitors, justly and rightfully were, and of right ought to be, Kings of Ireland, and so to be reputed, taken, named, and called, and for lack of naming the King's Majesty and his noble Progenitors Kings of Ireland, according to their said true and just Title, Stile, and Name, therein hath been great Occasion that the Irishmen and Inhabitants within this Realm of Ireland have not been so obedient to the King's Highness, and his most noble Progenitors, and to their Laws, as they of right and according to their Allegiance and bounden Duties ought to have been. Therefore, at the humble Pursuit, Petition, and Request of the Lords Spiritual and Temporal, and other the King's loving, faithful, and obedient Subjects of this Land of Ireland, and by their full Assents, be it enacted, ordained, and established by this present Parliament, that the King's Highness, his Heirs, and Successors, Kings of *England*, be always Kings of this Land of *Ireland*, and that his Majesty, his Heirs, and Successors, have the Name, Stile, Title, and Honour of *King* of this Land of *Ireland*, with all manner of Honours, Preheminences, Prerogatives, Dignities, and other things whatsoever they be, to the Estate and Majesty of a *King* appertaining and belonging; and that his Majesty, his Heirs, and Successors, be from henceforth named, called, accepted, reputed, and taken to be Kings of the Land of *Ireland*, to have, hold, and enjoy the said Stile, Title, Majesty, and Honours of the King of *Ireland*, with all manner of Preheminence, Prerogative, Dignities, and all other the Premisses, unto the King's Highness, his Heirs, and Successors for ever, as united and knit to the Imperial Crown of *England*. And be it further enacted by the Authority aforesaid, That on this side the first Day of July next coming, Proclamation shall be made in all Shires within this Land of Ireland, of the Tenour and Sentences of this Act. And if any Person and Persons, of what Estate, Dignity, or Condition soever they or he be, subject or reliant within this Land of Ireland, after the said first Day of July, by writing or imprinting, or by any exterior Act or Deed, maliciously procure or do, or cause to be procured or done, any thing or things to the Peril of the King's Majesty's most Royal Person, or maliciously give Occasion, by Writing, Deed, Print, or Act, whereby the King's Majesty, his Heirs, or Successors, or any of them, might be disturbed or interrupted of the Crown of this Realm of *Ireland*, or of the Name, Stile, or Title thereof, or by Writing, Deed, Print, or Act, procure or do, or cause to be procured or done, any thing or things to the Prejudice, Slander, Disturbance, or Derogation of the King's Majesty, his Heirs, or Successors, in, of, or for the Crown of this Realm of *Ireland*, or in, of, or for the Name, Title, or Stile thereof, whereby his Majesty, his Heirs, or Successors, or any of them, might be disturbed or interrupted in Body, Name, Stile, or Title of Inheritance, of, in, or to the Crown of this Land of *Ireland*, or of the Name, Stile, Title, or Dignity of the same; that then every such Person and Persons, of what Estate, Degree, or Condition they be, subject or Reliants within the said Land of Ireland, and their Aiders, Counsellors, Maintainers, and Abbettors therein, and every of them, for every such Offence, shall be adjudged High Traitors, and every such Offence shall be adjudged and deemed High-Treason, and the Offenders, their Aiders, Counsellors, Maintainers, and Abettors therein, and every of them, being lawfully convicted of any such Offence, by Presentment, Verdict, Confession, or Proofs, according to the Customs and Laws of this said Land of *Ireland*, shall suffer Pains of Death, as in Cases of High-Treason, and also shall lose and forfeit unto the King's Highness, and to his Heirs, Kings of this Realm of Ireland, all such his Manors, Lands, Tenements, Rents, Reversions, Annuities, and Hereditaments, which they had in Possession as Owner, and were sole seized of in their own Right, of, by, or in any Title or Means, or in any other Person or Persons had to their Use of any Estate of Inheritance at the Day of any such Treason and Offences by them committed and done. And that also every such Offender shall lose and forfeit to the King's Highness, and to his said Heirs, as well all such Estates of Freehold, and Interest for Years, of Lands and Rents, as all the Goods, Chattels, and Debts, which they or any of them had at the time of their Conviction or Attainder, of or for any such Offence; saving always to every Person and Persons, and Bodies Politick, their Heirs, Successors, and Assigns, and to every of them, other than such Persons as shall be so convicted or attainted, their Heirs and Successors, and all other claiming to their Use, all such Right, Title, Use, Interest Possession, Condition, Rents, Fees, Offices, Annuities, Commons, and Profits, which they or any of them shall happen to have, in, to, or upon any such Manors, Lands, Tenements, Rents, Reversions, Services, Annuities, and Hereditaments, which so shall happen to be lost and forfeited, by reason and occasion of any of the Treasons or Offences above rehearsed, any time before the said Treasons or Offences committed or done,

* The Stat. of *Ireland* printed at *Dublin*, 1621. p. 183.

NUMBER VI.

The Dying Speech of Mr. Peter Vowell *(a), executed* July 10, 1654.

Gentlemen,

AT this earthly Bar, from them that pretend to have a great Measure of Sanctity, I had hard Measure: But to that Bar I am now going, the Bar of Heaven, where I ſhall have Juſtice; yea, one Day Juſtice againſt them, except they water their Beds and Couches with Tears of Repentance.

The Court gave ſevere and raſh Judgment on my Body; and ſent a pitiful Fellow (but pitileſs) that gave as raſh a Judgment on my Soul: But that precious Jewel none of them could touch to hurt. The Souls under the Altar cried for Vengeance, loud, long ago: How many more of late Years have been added to them to help the Cry! The Cry is loud of thoſe lately, whoſe Blood hath been unlawfully ſpilt. But Vengeance is God's, and I will leave it to him.

The Court at my Trial ſaid I was confident, and held it as a Fault: He alſo whom they ſent to the *Tower* (I know not if to intrap me) under pretence to comfort my Soul, told me alſo I was confident. I ſay the ſame; and the ſame Confidence bring with me now; and by God's Aſſiſtance, I hope, ſhall carry it out of this World with my Innocence.

Gentlemen Soldiers, Amongſt the ancient and moſt ſavage ſort of Heathens they had a Law, one every three, ſix, or twelve Months, to offer up a Sacrifice of human Blood to their God; and that their God was a Devil. Amongſt us, whether Heathen or not you beſt know, of late Years, we have had a fatal Cuſtom, once in three, ſix, or twelve Months, to make not only a Sacrifice, but many Sacrifices of human Chriſtian Blood: Our Scaffolds have reeked and ſmoaked with the choiceſt Sort of Blood; but unto what God, do you judge. What God is he that delights in the Blood of a Man? *Baal*, the God of *Ekron*; *Beelzebub*, the God of Flies.

Amongſt the Primitive Chriſtians, that lived neareſt the Time of our Saviour Chriſt, the greateſt Tyrants and Perſecutors of the Chriſtians lived. The Perſecution was great; and yet the Courage of thoſe perſecuted Chriſtians was ſo great, that it excelled the Fury of the Perſecutors; that they came in faſter to be killed, than they could kill: They offered their Bodies and Throats ſo thick unto the Slaughter, that the Hands of the Tyrants were weary with killing. And yet *Sanguis Martyrum* was *Semen Eccleſiæ*: And many Heathens came in with the Chriſtians, and died Chriſtians, and died with them; the Chriſtians ſtill increaſed the more.

Of late Years there hath been a great Perſecution in this Nation; and yet the Sufferers have been ſo many, and preſented themſelves ſo thick, in the Vindication of their King, Country, and Laws, that they ſtartled the very Enemy himſelf; their Conſtancy ſo great, that the Eyes of their Judges dropt Tears; whether real or true, let the Judge of Judges judge: They ſtill ſtand amazed at their Conſtancy; though they exceed the old Heathens, are not weary of killing.

Oh Soldiers! how many of you have been brought up and led on by blind Principles, wronged in your Education, or ſeduced by your indiſcreet, heedleſs, and heady Teachers? How many of you, young, have for ſome ſmall Diſcontent departed from your loving Maſters, dear Friends, or tender Parents, and fled into the Army? How many of you driven by tyrannous Oppreſſion, Poverty, or Cruelty, have left your dear Wives and Children? And ſome for Novelty or Wantonneſs adhered to this Imployment, not conſidering the great Danger of ſpilling innocent Blood. How many of you have drawn your Swords, you do not know for what? How many of you keep drawn your Swords, you do not know for what?

You have put to death a pious and juſt King; and in his ſtead have reared up even another *Jeroboam*, that makes *Iſrael* to ſin: What his Goodneſs is, you beſt know.

You have put down a good old Law, and raiſed up another of your own to judge the People by. For my calling for the Benefit of the former, and for the Equity even of your own Law, I am in part condemned here to die. Be you Judge of the Proceedings.

How many of you have had a hand in putting down the ancient true Church, and raiſed up in your own Imaginations a new one? But, alas! you know not what you do: If you did, you would grieve to ſee what a glorious Church you have ruined; you would never have pulled up the Hedges, and broken down the Fences, that the wild Beaſts of the Foreſts ſhould come in; that the little Foxes ſhould devour, and the wild Boar root out ſo ſtately a Vine.

When the *Jews* were led into Captivity, their goodly and magnificent Temple was burnt: But in proceſs of Time they obtained Favour amongſt the Heathen Kings they dwelt amongſt, and had Liberty wherewith to rebuild. Rebuild they did, and finiſhed a Second Temple; at which Sight all the young Men rejoiced, to ſee ſo gallant a Temple; but the old Men wept, to ſee how far different and ſhort the Second Temple was from the Glory of the Firſt. So you, young Men, rejoice at your imaginary Church; but the old Men, methinks I ſee ſome weep. Oh! weep not for me! weep for your Country! weep to ſee Religion, Liberty, and Laws taken from you! weep to ſee ſo many good Men ſnatched away, but indeed from the Miſeries to come! and weep for what Miſeries your unhappy ſelves will ſuffer!

Soldiers, However you flouriſh for a time, and perhaps many of you may rejoice at our Deaths, believe it, as *Samſon* pulled the Houſe of the *Philiſtines* down, when he fell; ſo ſhall we give you and your Cauſe a greater Blow by our Deaths, than living we poſſibly could have done. You may for a time flouriſh; but remember what our Saviour ſaid: 'All 'you that make uſe of the Sword, ſhall periſh by the Sword.' You ſhall be cut down like the Graſs, and wither away like the green Herbs.

But do you behold yonder glorious Place? Do you behold the ſpangled Heavens, where the holy Angels dwell, where God himſelf is ſurrounded with Thrones, Principalities, Powers, and the celeſtial Spirits of juſt Men? When the Trump ſhall blow, when the Dead ſhall riſe at the dreadful Day of Judgment, how will you anſwer all your Rapes and Murthers? Do you think that your Hands, which have been bathed in the Blood of your King, the Blood of ſo many of your eminent Countrymen, ſo unjuſtly; that have been bathed in the Blood of many of your Friends, your Kindred, perhaps your Parents, can ever reach yonder glorious Place, without Repentance? Oh! no. Repent now, therefore, it is not too late: Shake off your bloody Protector; reſcue your antient Laws; and call in your Royal young Prince, whom you have long enough wronged. Make your Addreſſes to the great Protector of Heaven and Earth; and deſire him, as I now do for myſelf, for a Pardon, for a Pardon for all your former and preſent Tranſgreſſions.

I die an obedient Son of the Church of *England*, and with a dutiful Heart to the King; and deſire that none preſent that loves them would be diſheartened by my Death, but continue faithful to the End.

And ſo farewel, I forgive all the World.

NUMBER VII.

A true and impartial Relation of the Death (and Dying Speech) of Mr. John Gerard, *who was beheaded on* Tower-Hill, July 10, 1654 *(b)*.

[*Publiſhed by his Friends.*]

IT was thought needleſs by the Friends of Mr. *Gerard*, to declare any thing concerning his Sufferings to the World more than in their Sighs, had not the ſacrilegious Malice of the laſt weekly Pamphlet thrown ſome Stains upon his Name, and ſo incenſed them to a Vindication as pious as his Death was. 'Tis moſt certain, that there can no Blots ſtick upon true Honour, which ſuch weak Felons endeavour againſt it: Theſe are curſed Beaſts, but their Horns are ſhort; ſepulchral Dogs, that ſcrape up Graves, and violate the Dead, and are fierce and ravenous; but yet Dogs ſtill. And all worthy People will call their Railing, Praiſe, and what they intend a barking Infamy, the greateſt Merit. Yet becauſe every Underſtanding is not of the ſame Brightneſs, and thoſe putrid Libels may, by ill Chance, fall into ſome innocent Hand hereafter (and yet ſure ſuch Vermin ſhould not be endured long), therefore let wiſe and good Men pardon him that hath undertaken this Juſtice for that Gentleman, and be pleaſed to read this ſad Story, not for their Satisfaction ſake, but their Sorrows: It may dry up a friendly Tear, perhaps, and ſtill a murmuring Groan, to ſee the comely Poſture of his Paſſion, how well all was carried by him, and how honourably; and the honeſt Circumſtances may not improbably take off from the Sadneſs. Why ſhould I grieve that Death which had ſuch a living Glory in it? or diſhonour that Blood with feeble Tears, which was ſhed ſo like the holy Martyrs? All that knew this Perſon, cannot but witneſs his general Reſolution, and whether his great Courage fell leſs than itſelf (as that Viper hiſſeth), or did not rather riſe greater now, when the Chriſtian was twiſted with the Gentleman, let this faithful Relation witneſs: In which, though all Terms and Syllables may not be exactly the ſame, yet if there be a material Falſhood, or a wilful Flattery, may his Neck that wrote it feel a viler Deſtiny than Axes are, or Halters. *Amicus* Gerardus, *ſed magis Amica Veritas.*

From the firſt Day of his Impriſonment he foreſaw the heavy Sentence hovering upon him, and therefore gave all Diligence to ſecure himſelf againſt it; that however he underwent a temporal Condemnation, he might eſcape an eternal. But after that ſad Doom was pronounced, then he beſtirred himſelf amain, and made double Haſte for Heaven: It was for his Life, and therefore he would loſe no Minute, but the ſame Night gave Directions to a dear Friend for a Miniſter (whom he knew to have long honoured his Family) to be

(a) From the MS. of Dr. *Richard Drake*, late Chancellor of *Sarum*.—This *Speech* ſhould follow his *Trial*, in Vol. II. P. 212 to 217.
(b) This Relation and Speech ſhould follow his Trial, Vol. II. P. 212 to 217.

brought to him early next Morning; and it pleaſed Authority to gratify him in this great Deſire, ſo that an Order was ſent freely for the quiet Admiſſion of any ſuch Perſon to him. With this ſpiritual Friend he ſpent ſome Hours every Day in Prayer, and other ghoſtly Refreſhments; which (God be praiſed) were not without ſweet Effect and Impreſſions upon his Soul. There were ſome other Miniſters (Mr. *Bond* and Mr. *Caryl*) of great Obſervation for Gravity and Godlineſs in theſe Times, who viſited him, and who I am confident will put their Seal to this Truth with me, that they found him meek, humble, modeſt, penitent, comforted, and not far from the Kingdom of God, if not already in it; but I have good Hope he was in Poſſeſſion, and ſo had he, thro' Grace. Upon the Morning (which was the laſt he muſt ſee until that of the Reſurrection) he ſubmitted to ſome wholeſome Orders of the Church, and received her Comforts by them. That done, he proceeded to (the higheſt Enjoyment of Grace that can be adminiſtered upon Earth) the holy Communion, whereof with his Brother Sir *Gilbert Gerard* he was a Partaker, with as much Reverence, Zeal, Thankfulneſs, holy Sorrows, and holy Joys, as a devout Soul could evidence: He wept as if he would have waſhed his Saviour's Wounds, which his Faith preſented in his Tears; and yet he ſaid he was admirably raviſhed with all inward Peace and Comfort in his own Conſcience. This paſſed; he had now nothing to do but to die, which he expected that Morning very ſpeedily: But by the Pleaſure of Authority both the Time and the Place of his Execution were altered; ſo that he was to wait a little longer until Evening, for his Releaſe. Many Friends and Perſons of Honour came to take their laſt Leave of him, who can gladly witneſs his Undiſturbedneſs and civil Chearfulneſs to every one of them. His Brother tarried continually with him, and they eat together; and though ſome Eruptions of Paſſion could not be reſtrained now and then, where Nature was ſo much concerned, yet they were generally pleaſant; and at laſt parted (about half an Hour before he was led forth to Death) with as much Calmneſs and Placidneſs as if they had been to meet again anon ſafe and unhurt, as they had done formerly. So have I ſeen a windy and ſtormy Day conclude in Stillneſs and Sun-ſhine, as if weary, and deſiring to reſt without any Breath of Trouble. The Miniſter only waited on him to the laſt; and about Five o'Clock enters the Lieutenant of the *Tower*, and the Sheriff of *London*; (two ſure Friends, that will not leave him, as long as he hath Life remaining in him:) They told him a ſour Meſſage, That they were come to conduct him to his Death's Blow. He replied, They were very welcome; and received them ſo fearleſs and untroubled, that the Sheriff told the Miniſter, He was ſorry to ſee him ſo unfit for that Condition; but (under Favour) he miſtook his Condition: That which he accounted Fitneſs to die, our Pamphlet-monger would have called Flagging and Cowardice. So hard a Thing it is to ſatisfy all Curioſities, even with our Blood, and nothing more ingenious than to carry this bitter Cup even, when ſo many Miſconſtructions ſhake it. At his Lodging, he deſired the Sheriff that he would permit the Miniſter, and three others that were his Friends and Servants, to go upon the Scaffold with him; which, as it was a ſeaſonable Wiſdom in him to deſire, ſo was it a fortunate Kindneſs from them that granted it, elſe it may be their Teſtimony might have been wanting to his injured Reputation. He took Leave particularly of the Houſhold, where he was a Priſoner, and was ſo clearly collected in every Thing he did, that he went out of his Way into the Kitchen, to bid his Landlady farewel, giving Thanks for her Reſpects during his Bonds, which he ſaid he ſhould die in to her. As he paſſed by the Guards in the *Tower*, he gave them Money twice, and told them, he ſhould trouble them no longer, being on his Remove to better Guards. He walked along to the Scaffold on *Tower-Hill*, ſhewing a great deal both of Humility and Reſpect to the People, who generally lamented him, and prayed for him. As he went, he was bare-headed for the moſt part, carrying his Hat in his Hand, and ſometimes reſting it in a careleſs Bravery on his Left Side. When he came to (or rather leaped upon) the Scaffold, (for he was ſo far from flagging when about to tread that tragical Stage, that many obſerved how ſprightfully he ſeemed to ſkip up the Steps to it, as if he had gone to dance there, rather than to die) his grim Executioner preſented himſelf to him, to whom, with a chearful Smile, he ſaid, *Welcome, honeſt Friend*; and deſiring to ſee his Ax, he took it into his Hands, and kiſſing it, with a pretty Glance of his Eye (which was a natural Lovelineſs in him) towards the Miniſter, he ſaid, *This will do the Deed, I warrant it.* The Scaffold was very much crowded with People, yet, as well as he could, he made ſome Turns to and fro upon it, with a Paper (which he had taken out of his Pocket) in his Hand, wherein, it ſeems, he had prepared ſome Heads of a Speech, which he intended to have delivered; but the Sheriff and Lieutenant told him, if he ſpoke any Thing, it muſt be very brief, and that they muſt not ſuffer him to ſpeak any Thing that was ſeditious: "Well, Gentlemen *(ſaid he)*, your Will be done; but, "God be praiſed, I never yet had to do with any Thing that was ſedi- "tious! I would fain have ſpoken ſomething to clear myſelf to the World, "according to the Cuſtom, if it might have been: But come, Sir, "*(ſays he, turning to the Miniſter)* let you and I ſpeak to him that will give "us Leave;" and ſo kneeling down together in a Corner of the Stage, the Miniſter prayed with him a ſhort Time; which done, they ſtood up again: Then turning himſelf to the People, and putting off his Hat, he told them, That he was not permitted to ſpeak a few Words, according to his Intention, yet he doubted not but what he would have ſaid would come to their Eyes, though it muſt not come to their Ears; "But "this I deſire all to take Notice of, (*and this he ſpoke with a double Vehe- "mence*) that I die a faithful Subject and Servant to King *Charles* the Se- "cond, whom I pray God to bleſs, and reſtore to his Rights; and had "I Ten Thouſand Thouſand Lives, I would gladly lay them all down "thus for his Service." Here he was interrupted, and the Sheriff wiſhed him rather to confeſs what he knew concerning the horrid Plot he was condemned for; he anſwered, That he had confeſſed all that he knew concerning any Plot; that he thought they knew more of the Plot that condemned him, than he did, but he heartily forgave them. The Miniſter told him, it was well done to forgive and pardon thoſe that perſecute us, that was an Act of true Chriſtian Love, but, as his Caſe ſtood, Love was not enough; he ought to deal in this Buſineſs (upon which his Life lay) with all Candour and Sincerity, not concealing any Thing of that Nature, as was charged againſt him, as far as he might glorify God, and ſerve the Publick Good. Upon which, lifting up his Eyes towards Heaven, and laying his Hand upon his Breaſt, "Oh! Sir, *ſays he*, if "there had been any ſuch Thing in this Breaſt, would I not have revealed "it before this Time? I proteſt, in the Sight of Almighty God, I know "no more of any ſuch Deſign, but only what I have often acknowledged, "that it was motioned to me by *Henſhaw*, (who, I confidently believe, "is in their Hands,) and debated twice or thrice, when I was with him; "but I never entertained it at all, and at the laſt flatly diſowned it, and "told him, I would have nothing to do in it. He was many Times "preſſing me to nominate what Perſons I knew I could bring, and to have "their Names; but let them ſhew any ſuch Thing, if they can againſt "me: But I am certain he is in their Hands." Pauſing here a little, and fetching a Turn or two on the Scaffold, being very hot, (as he had been all that Morning) he called for ſome Small-Beer, which he had given Order to be ready, and was brought thither in a Stone Bottle, of which he drank a little once or twice. Then the Miniſter went to him, and minded him, that ſomething might be expected from him, as to his Religion, and Diſpoſition to die: To which (gathering up an extraordinary Reſolution in his Face) he replied, "I die a Chriſtian, a true Chriſtian, "according to that Faith and Religion, which was profeſſed by the "Church of *England*, in the Time of our late King, of bleſſed Memory. "And I praiſe God, I am ſo fitted and ready to die, that I am confident, "by the Merits of Chriſt Jeſus; that my Sins are pardoned, and my Sal- "vation is at Hand." Then turning about, he called for his Waiſtcoat and Cap, and throwing off his Doublet, put them on, whilſt his Servants helped to put up his Hair. His Waiſtcoat was not very clean, which he took Notice of to his Man: *But 'tis no great Matter*, ſaid he, *if the Heart be clean, all's well enough.* Being thus prepared, he calls for the Block, and viewing it, (as with Delight) laid himſelf down upon it, to ſee how it would fit, and was ſo far from ſinking at the Sight of it, that he almoſt played with it; and riſing quickly, pulls a little Prayer-Book out of his Pocket, which he gave to the Miniſter, willing him to find that particular Prayer which was proper for that Occaſion; but the Crowd being great, he could not quickly find it, ſo that he kneeled down with the Book open awhile in his Hand, as if he had read, but quickly ſhut it, and prayed with great Expreſſions of Fervency by himſelf. When he had done, the Lieutenant ſaid ſomething to him (as it ſeems) concerning his Brother *Charles*, that had witneſſed againſt him; I know not what the Lieutenant ſaid, (for he ſpake low) but Mr. *Gerard* ſpake aloud, and replied paſſionately, "Oh! Chriſt, Sir! I love my poor Brother with all my "Heart! He is but a Youth, and was terrified; I know how he was dealt "with; tell him, I love him as well as ever I loved him in my Life: "And commend me to my Brother Sir *Gilbert*, whoſe Releaſe I beſeech "you, Sir, to aſſiſt; there being no more Cauſe, that I know of, for "his Impriſonment, than only that he was found in the ſame Bed with "me, which, ſure, is no capital Crime." Having ſaid this, he took his Leave with him, and the Sheriff, and all he knew on the Stage; and turning about once more to the People, deſired them to pray for him; himſelf kneeling down with the Miniſter, laid his Head in his Boſom, and they prayed together the laſt Time. After this, he bid them all farewel again, and beſought them to remember they had a poor Sovereign abroad, who deſerved to be remembered. Then forgiving the Executioner, and ſaluting the Miniſter with his laſt Embrace and Kiſſes, he bowed himſelf to the Stroke of Death, with as much Chriſtian Meekneſs and noble Courage mixed together, as I believe was ever ſeen in any that had bled upon that Altar: And this all the People, that were Spectators, did ſeem to underſtand and acknowledge, beholding his fatal Blow with a univerſal Sadneſs and Silence; whereas, when the other Gentleman fell quickly after, upon another Score of Blood and Riot, they gave a great and general Shout, as applauding the Juſtice of the *Portugal*'s Death *; but pitying and bewailing the untimely Fall of ſo brave and magnanimous a Spirit, as did (through all the Clouds of Death) ſhine glorioufly in this unfortunate Gentleman.

His SPEECH.

"*Gentlemen*,

"AS this Kind of Spectacle is no new Entertainment to your Eyes, "for you have had a late Glut of ſuch Objects, ſo is it no ſtrange "Thing to me to be made ſuch a Spectacle; for I have been bred upon "the Theatre of Death, and have learned that Part ſo well, though, I "confeſs, a very hard one, as to perform it pretty handſomely, both as "becomes a Gentleman and a Chriſtian.

"Only I muſt deſire you to expect no fine Prologue, or Speech, from "me; I never ſtudied to make Orations: A very unfit Man to lay Plots "againſt a State, who am ſcarce able to lay a few Lines of plain *Engliſh* "together, as I ought; but though I cannot ſpeak happily, I doubt not "but I ſhall die happily.

"I confeſs myſelf a great Sinner; Who is innocent? God be merciful "to me, a miſerable Sinner. I adore the Juſtice of God in all this that "is come upon me: I have deſerved to die long ſince, and bleſſed be God, "who hath given me ſuch Time to prepare; but for this Crime I ſtand "condemned for To-day, I do proteſt mine own Innocency, as to any "Conſent or Engagement to act in it.

"I hope you will believe me, when you conſider upon what ſlender "Proofs and Teſtimonies I ſuffer; none of them legal, or poſitive, but "circumſtantial.

"For my Brother *Charles*, alas, poor Youth! how he was wrought "upon! But I deſire all my Friends to think honourably of him.

"For my Brother Sir *Gilbert*, this Imagination of a Plot is ſaid to have "been hatched in *France*, but I fear the Neſt was at *Whitehall*.

"As for the King, ſo far from concurring to ſuch a Deed, that I am "only unſatisfied in this, whether I ſhall die right in his Favour, be- "cauſe ſuſpected of any Thing ſo unworthy of him.

* *Don Pontaleon Sa*, Brother to the *Portugal* Ambaſſador, who was convicted *July* the 6th, with others of Murder, (in the *New Exchange*) by a Jury of ſix Aliens, and ſix Denizens, was brought to the Scaffold, and executed with Mr. *Gerard*.

"I fear

" I fear he loſt his Kingdom by ſuch Practices; but whether he would " recover them ſo, is a Queſtion: God hath better Ways, when it ſhall " be good in his Sight to plead his Cauſe.

" I was lately in *France*, but on mine own Score; for I have com- " manded there, and probably might again.

" For my paſt Life, it hath been but a troubleſome one, but now I " hope I ſhall reſt! Since I was any thing, I have ſerved the King, as I " was bound; and I wiſh all that did ſo had done it as faithfully: He " was condemned for a Tyrant, but God——

" For my Religion, though a Soldier, I am able to profeſs I am a " Chriſtian Soldier, a true Son of the Church of *England*, as conſtituted " under Queen *Elizabeth*, King *James*, and King *Charles*, of bleſſed " Memory: Her Doctrine and Government I embrace, her Truth and " Peace I pray God to reſtore.

" I humbly give Thanks to God Almighty, for providing me the " Comfort of a Miniſter, on whoſe Fidelity I might repoſe my " Soul.

" And I pray God to bleſs the poor faithful Miniſters of this Church, " and give you Hearts to eſteem them; the Want whereof is no ſmall " Cauſe of our Miſery.

" My Days have been few and evil, yet, God be bleſſed, in all the " Vanities and Folly of Youth, I have been far from Atheiſm, or Con- " tempt of God's Worſhip; I had always awful Impreſſions of God's " Honour and Service, which is now my Comfort.

" And now, dear Countrymen, fare you well! I pray God bleſs you " all, and this whole Nation.

" Alas, poor *England!* When will theſe black Days be over? When " will there be Blood enough? I wiſh mine may fill up the Meaſure.--- " I forgive all.

" Once more, fare you well! Commend me to all my Friends, pray " for me.

" I pray God make you as faithful and loyal as I have lived, and as " happy as I ſhall be by-and-bye, when I am dead.

" Come, Lord Jeſus! come quickly!

" Father of Mercies, have Mercy on me!

" Saviour of the World, ſave my Soul!

" O Lamb of God, that takes away the Sins of the World, hear my " Prayers!

" Into thy Hands, O Lord, I commend my Spirit!

" Lord Jeſus! receive my Soul!"

NUMBER VIII.

The Trials, Behaviour, and Dying Speeches of Col. Okey, *Col.* Barkſtead, *and* Miles Corbet, *Eſq.* April, 1662*.

[Publiſhed by their Friends.]

COlonel *Okey*, Colonel *Barkſtead*, and *Miles Corbet*, Eſquire, being involved in one and the ſame Danger, did, ſince the King's coming in, ſhip themſelves for *Holland*, after many great Difficulties and Hazards. Two of them, *viz.* Col. *Barkſtead*, and Col. *Okey*, after a ſhort Stay in *Holland*, travelled up higher into the Country, and at length ſettled themſelves at a Town called *Hana*, in High *Germany*, where, by their good Carriage and obliging Converſation, they obtained the Favour and Privilege to be enrolled Free Burghers of the ſaid Town. They continued there for many Months, in good Eſteem with the Inhabitants, and with great Endearment of Affections to each other. Some urgent Occaſions inviting Col. *Barkſtead* to return for *Holland*, Col. *Okey*, out of mere Kindneſs and Reſpect to his Friend, reſolves to accompany him, and ſo both of them took their firſt Conveniency for *Holland*; having before received Encouragement to undertake the Voyage, from a Friend, whom they had employed to ſolicit the States General, that they might abide for a ſhort Time within their Juriſdiction, unmoleſted, to which, as their Friend informed them, they did moſt freely and willingly condeſcend. Another alſo was more particularly engaged by Col. *Okey*, to acquaint Sir *George Downing* (the King's Reſident now in *Holland*,) with their Intentions of coming ſpeedily into that Country in caſe they might, for a few Days, remain there in Safety, and that he had no Order from the King his Maſter to ſeize them: Sir *George* did aſſure that Gentleman, that he had no Order from the King to apprehend or moleſt them, but that they might be as free and ſafe there as himſelf. Upon this laſt Encouragement they did very much depend, Col. *Okey* eſpecially being confident that Sir *George Downing* had a particular Kindneſs for him, who gave him his firſt Bread in *England*. This generous and plain-hearted Colonel (who took a Meaſure of all Men by himſelf) did, without the leaſt Heſitation, repoſe a great deal of Truſt and Confidence in one whom he had been inſtrumental to raiſe from the Duſt. They had not been long in *Holland*, before their Occaſions called them to *Delft*, whereof the forementioned Knight had timely Notice by one of his Spies employed for that Purpoſe, and having in Readineſs a Warrant from the States General for the ſeizing of them, the Knight, and his ruffianly Crew, without the leaſt Senſe of Humanity or Honour, having certain Knowledge of their Arrival at *Delft*, did, the very ſame Night, proceed upon their Deſign, and took them at their Lodging, together with Mr. *Corbet*, who, upon Notice had that they were in Town, went only to give them a Viſit, and it being late, was even ready to take his Leave of them. When they were all three thus ſeized, immediately they were hurried to Priſon, and by the Procurement of Sir *George Downing*, were moſt barbarouſly uſed, having Shackles and Fetters put upon them, and ſo caſt into a naſty, moiſt, and dark Dungeon, having nothing elſe but the damp Earth to repoſe upon, and there continued all Night, till two of the Clock the next Day, in a very ſad Condition; but afterwards, being treated a little more like Men, ſome of the States came to them into the Priſon, bringing one of their chief Miniſters with them, and between examining of them, and diſcourſing with them concerning the Fact for which they were ſeized, and the Cauſe in which they were formerly engaged in *England*, wherein Col. *Barkſtead* eſpecially gave them ſuch Satisfaction, that all of them, and particularly the Miniſter, when they took their Leaves of them, ſeemed to have a better Opinion both of their Perſons and their Cauſe, than they had before; and did withal give them Aſſurance, that they ſhould not be delivered up, to be ſent for *England*, until they had *had* a more publick Hearing of what they could ſay in their own Defence. But by the extreme Officiouſneſs of Sir *George Downing*, and his continued Solicitations, accompanied (as is reported) with ſtrange Menaces, theſe Perſons were ſoon after, (not only contrary to the particular Engagements of the Lords before-mentioned, but alſo againſt the very Laws of Nations, and of all human Society and Commerce, yea, againſt their own former Practice, in the Caſe of *Ravillac*, who murdered the King of *France*,) by Order from the States General, at two of the Clock in the Morning, taken out of Priſon, and being manacled with Wriſt-Irons, Chains, and Locks, were thruſt into a Veſſel lying at *Delft*, and from thence conveyed into one of the King of *England*'s Frigates, provided for the Purpoſe, and ſo in a few Days were brought for *England*. When they arrived at the *Tower* of *London*, they were forthwith diſpoſed of, by Order of the Lieutenant, to their ſeveral Priſon-Lodgings, and there continued until the Sixteenth of *April*, 1662, upon which Day they were carried up by Water to the King's-Bench Bar, to receive Judgment, having been already, by Act of Parliament, attainted of High-Treaſon, for compaſſing the Death of the late King *Charles* the Firſt. After a very ſhort Diſpute, whether the Priſoners at the Bar were the Perſons named in the forementioned Act of Attainder, yea or no? Witneſſes being produced, who made full Proof in the Affirmative, and the Priſoners themſelves confeſſing it, the Jury, without going from the Bar, gave in their Verdict, that they were the Perſons named in the ſaid Act, whereupon Judgment was given againſt them accordingly. After Sentence was given, they were remanded back to the *Tower*.

Colonel BARKSTEAD's *Behaviour.*

THE Morning of his Execution being far ſpent in diſcourſing with his Friends, the Sledge, about eight of the Clock came into the *Tower*, which making a great Noiſe upon the Stones, he ran to the Window with a ſmiling Countenance to view them, and ſaid, *Oh! our Chariots are now come!* A little while after the Sledge came, the Gentleman Porter, or ſome other Officer in the *Tower*, came to acquaint him with it, deſiring him to prepare for his Departure; to which he rejoicingly anſwered, That bleſſed be God, it was not then to do; and ſo, with much Chearfulneſs, he committed his Wife into the Hands of the Lord God Almighty, reſting upon his Promiſe, That he will be a Father to the Fatherleſs, and a Huſband to the Widow. A little before his Departure, he deſired his Wife to button on his Cloak, which accordingly ſhe did, and preſently the Gentleman-Jailor, and a File of Soldiers came, by the Lieutenant's Order, and received him; at which Time he parted with his Wife and Relations, as himſelf profeſſed, with as much Joy as ever he received them. Now being brought by the Jailor to the Lieutenant's Door, that being the Place appointed for the Sledge to receive them; and although it was the Place and Houſe in which he lived in Plenty and Honour, yet he had ſo much eſtranged himſelf unto it, that he did not ſo much as caſt his Eye upon it; and no Wonder, if his Treaſure were in Heaven, that his Heart was there alſo. He was appointed the firſt that ſhould enter the Sledge, and ſo to be drawn the foremoſt of the three through the City. Having thus entered the Sledge, he ſat down, and looking about him with a chearful Countenance, and ſpeaking comfortable Words to ſuch Friends as were near him, after a-while, the Sledges were ordered to be drawn away, which accordingly was performed; and coming down the *Church-Hill*, oppoſite to his Priſon, (*alias* his Palace), his Wife, with ſome other Friends, ſtanding at the Window, took her Handkerchief out of her Pocket, and ſhook it at him, which he perceiving, took off his Hat, and ſeveral Times ſhaking it over his Head, cried out with an aſtoniſhing Chearfulneſs, *To Heaven, to Heaven, to Heaven, my Love, and leaveyou in the Storm!* Thus paſſing along, he came to the *Tower*-Gate, where ſome reviled him in Words and Carriages, not only his Enemies, but his former intimate Friends, which he rather ſmiled than was troubled at. Near *Holborn* there came a young Woman to him, being very earneſt to ſpeak to him, which the Officers permitted; all that ſhe told him ſhe had to ſay to him was this, That whatſoever he did, ſhe begged of him to go on chearfully in ſo glorious a Cauſe. Several ſpake to him in the ſame Manner: And though he met with ſome Revilers in the Way, yet the Number of his Friends, and of ſuch as bleſſed him, and the reſt in the Name of the Lord, far exceeded them. As he paſſed along, ſeveral Times, a Friend that accompanied him, aſked him how he did? Who told him, He was never better in all his Life, and that he grew ſtronger and ſtronger every Moment. And going up *Holborn*, being in Diſcourſe with the ſame Friend, he, with a ſmiling Countenance, told him, That he evidently ſaw Jeſus Chriſt coming down

* This ſhould follow the Trials and Speeches of the Regicides, Vol. II. p. 413.

the Hill to receive and embrace him; and that this Hour's Difficulty, that he was now to go through, was not to be mentioned with that Glory he was to enjoy. When he came near the Place of Execution, the Multitude of People encreasing, they could not bring the Sledge near the Gallows, so the Sheriff ordered that he should be brought on Foot, which accordingly was performed; and a Cart standing ready under the Gallows, he chearfully got into it; before which, some of his Friends took their Leave of him, he leaving this Word of Counsel with them, To trust in that God, that hath promised never to leave nor forsake those that trust in him.

Being entered the Cart, the Executioner tied his Hands with black Ribbons, taking off his Perriwig, and putting on his Cap. The Sheriff told him, that he would permit him to say any thing between God and himself, but nothing in Justification of the Act: But he refused to say any thing 'till Col. *Okey* came, which was immediately after.

Several reviled him at the Place of Execution; among the rest, the Lord ——, bidding him (in a scoffing way) *Good-buoy*, Barkstead, *Good-buoy!* To which, with a Smile, he returned this Answer, *Sir, you are no Gentleman, to triumph over a dying Man.*

Another Thing observable was, that a Courtier, by way of Derision, told him, O Barkstead! *you have got the Comforter!* (meaning a little Strong-water Bottle that he had in his Hand) To which he replied, That, blessed be God, he had a better Comforter than that, or else he should not be able to stand there so chearfully as he did.

To conclude, all his Carriages and Actions were exceeding chearful, going through those Difficulties he met with, with an undaunted Resolution, to the Admiration and Astonishment of his Enemies, and the great Rejoicing of his Friends, who had before earnestly besought the Lord to vouchsafe his comforting and assisting Presence to him.

Colonel JOHN OKEY's *Behaviour.*

ON *Wednesday* the 16th of *April*, 1662, being the Day that Col. *Barkstead*, Col. *Okey*, and Mr. *Corbet* had Sentence passed upon them at the *King's-Bench* Bar, after which a Friend went to visit Col. *Okey*, and found him in a sweet and blessed Frame of Spirit, and very chearful, not in the least under any Discouragement, but acquainted the said Friend, that they had been up at *Westminster*, and that Sentence was given against them; and declared he was not in the least disquieted at it, but thankfully owned the Providence of God, in bringing them from the Place where they were beyond Sea, to their present Condition, wherein he professed himself to be much satisfied, and declared, he had rather lay down his Life here, than to have been buried in another Nation; and expressed further, That for what he was charged withal and condemned, he had not the least Trouble upon his Spirit. He also told this Friend, That he desired to bless God for the Prayers of the Lord's People, for he found the Benefit and Advantage of them in this Time of his Trial: And with much Chearfulness of Spirit, afterwards he did bless the Lord for his Goodness to him, declaring he had got more Benefit and Advantage in the Time of these his Troubles, than in many Years before; and one Day especially, since his coming into the *Tower*, he said, He was reading some Verses in the xvith Chapter of *John*, and the Lord did so set home upon his Spirit, *ver.* 26, 27, especially that Word, *The Father himself loveth you*, that he was so much refreshed in his Soul, that for an Hour together he was, as it were, ravished with the Joy of the Lord; the Sight of which was much Comfort to his dear Wife, and did much refresh and cheer her Spirit.

And upon *Friday*, the Day before his Suffering, several Friends went unto him about One of the Clock, and were with him some Hours; he several Times spake to them, saying, *Well, Friends, I shall now get to Heaven before you, and shall go out of a sinful, evil World, into that Place where I shall sin no more, nor sorrow any more; I bless the Lord, he is good to me in all his Dispensations, and I could not have been without any of these Afflictions.* Then he mentioned divers choice Places of Scripture, as 2 *Cor.* iv. 8, 9, and the 17th Verse, explaining the Words to sweet Advantage: *As for Afflictions*, said he, *they are but slight and momentary, and that they work to Glory, yea, an exceeding, yea, a far more exceeding and eternal Weight of Glory:* And much strengthening himself with the Promises of God, *Isa.* xliii. 1, 2. upon which Scripture he did thus descant: *Though* Jacob *was but a Worm, and so trodden upon by every one, yet the Lord would be with him, and so with all his Saints and People in their Sufferings.* He insisted also upon that Scripture, *Heb.* xiii. 5, 6. together with many others, which were proper to his Condition, and the Lord was pleased to make every one of them a strengthening Cordial to him.

The Day of Execution, several Friends went to Col. *Okey*, by Six of the Clock in the Morning, where they found him ready dressed, and with a sweet, chearful Spirit bid them welcome. They asked him how he did; he said, Never better in his Life, and had found the Benefit of Prayers, and it had been a sweet Night unto him, being sweetly refreshed, which also did much appear by his chearful and fresh Countenance; for it was observed, that he never looked better in all his Days. He declared he had much Quietness in his Spirit; and said, As for the Loss of his Estate, it did not in the least trouble him: Then a Friend hinted to him, the parting with his Wife and Relations; he answered, She had been a very tender Wife to him, and had expressed her abundant Love and Tenderness in this his Distress; but he was not in the least troubled at their parting, being assured the Lord would be better to her than he could be; and also said, that though his Wife had lost much since she knew him, as to outwards, yet she had gained much, as to the better Concernments, (for so his Wife had declared unto him) which doubtless, well considered, will out-weigh all other Losses. Some of these Friends spent some Time in Prayer with him; also the Colonel himself went to Prayer, and the Lord appeared very much in carrying forth his Spirit to own his Hand, and to see his Goodness in all his Dispensations, and to implore further Assistance: And between the Times of Prayer, they had much sweet Conference with him, in all which he manifested a very gracious and holy Frame of Spirit, and often declared, with great Chearfulness, that he was ready to be offered up. He was heard often to ask, Whether his Chariot was yet come, or no? And some Friends told him, *Well, now the Time draws nigh*; who answered, *I am ready, I am ready.* Then came the Order for his going to the Sledge; upon which he went with all Chearfulness, and so went forward with undaunted Courage, to meet Death in the Face, like a Christian Soldier indeed; who, through the Lord's Assistance, presently obtained more than a Conquest over all his Enemies.

As he was in the Sledge, and drew near to the Place of Execution, a Friend came to him, and said, *Sir, I have a great Desire to know how it is with you, and how the Lord is pleased to manifest himself unto you, in the Condition you are now in.* The Colonel replied, *Friend, I thank you, I bless the Lord I have great Cause to praise and magnify his great and glorious Name, for his unspeakable Goodness towards me, especially in this present Dispensation; for I can truly say, and that by Experience, that the Goodness of the Lord endures for ever; and praised be God for this present Trial!* The same Friend further replied, and said, *I pray, Sir, Are you not at all dejected in your Spirits? Are you not cast down in your Mind? Have you not hard Thoughts of God for this his strange Providence towards you?* The Colonel replied, *Friend, I shall endeavour to satisfy you as well as I can in this Matter; and I let you know, that I have not the least Trouble upon my Heart, nor the least Burden upon my Spirit, upon the Account of my Sufferings; neither have I any hard Thoughts of God, but, on the contrary, can speak to the Praise of his Grace, that his Goodness hath carried me forth above the Fear of all these Things. And, my Friend, let me tell you further, that I have had more Experience of God, and more Acquaintance with God, within these three or four Days, than ever I had in all my Life; and at this present, I am so far from being dejected, or cast down in my Spirits, as that I am so much elevated and lifted up in my Soul, that I am not able to tell you how it is with me.*

And when he was ready to rise out of the Sledge, another Friend came to him, and asked him how he did? To whom he answered, *I bless the Lord, I am very well, and do no more value what I am now going about, than this Straw:* (taking up a piece of Straw in his Hand.) *I have,* says he, *made many a Charge in my Time, but now I have but one Charge more to make, and then I shall be at rest.*

Mr. CORBET's *Account of the Proceedings against him at* Westminster.

THurſday, *April* 17, some of his near Relations and Friends came to visit him, and having heard some malicious Reports to his Prejudice, as that he had denied his Name, and not owned himself to be the Person that was mentioned in the Act, when he was at *Westminster*, at the *King's-Bench* Bar; earnestly desired him to let them know the Truth of Things from his own Mouth: To which he readily answered, That he was much misunderstood, and wrongfully represented, if any said so of him: And moreover said, That, he blessed God, he was neither ashamed of his Name, nor of his Cause, nor of his Master, and hoped never should; and then related as followeth.

That his Brethren, Col. *Barkstead*, Col. *Okey*, and himself, being brought before their Judges, were there called all by their Names, to which they made Answer, and, as they were bid, held up their Hands. Then the Question being put, What they had to say for themselves concerning the Fact which they stood there arraigned for, and which they were charged with in the Act of Parliament, at that Time read before them? Mr. *Corbet* answered, He did not take himself to be the Person named in the said Act, for that he did never maliciously, wickedly, and traitorously imagine, contrive, or endeavour to murder the late King, as was there charged upon him in the said Act, and therefore desired them to prove it. What! (said some on the Bench) will you deny your Names now? Did you not answer to, and hold up your Hands at those Names? To which Col. *Okey* made answer (not understanding Mr. *Corbet*'s Drift, which was to have a Proof made, that they were Guilty, in Manner and Form as the Act expresseth it), He would never deny his Name for the Matter: *No more will I,* saith Mr. *Corbet*, *neither do I; but may there not be more Men of my Name,* saith Mr. *Corbet*, *that perhaps may have been guilty of Malice against the King? though for my own Part I never was.* Then Col. *Okey* began to perceive his Mistake, and Col. *Barkstead* also; who being thus rectified, Mr. *Corbet* proceeded, and told the Judge, It was true, they were called by their right Names, and did accordingly own them; *Yet,* saith he, *it doth not judicially appear to this Court, that we are the Persons meant in the Act* (putting an Emphasis on the word *judicially*). *No,* saith one, *the Parliament hath adjudged it, and you are the Men; yet however,* said some, *let a Jury be empannelled:* And then the Attorney-General saying, that he was ready for a Trial, a Jury was called, against which no Exceptions being made, Evidences were taken, and they found Guilty *(a)*. The Judge then asked again, What they had now to say, why Sentence should not pass? Mr. *Corbet* replied, He humbly conceived the Proceedings of the Court were not regular, nor agreeable to former Precedents; for according to Law, there ought

(a) The King against Okey, Barkstead *and* Corbet.

They having been attainted by Act of Parliament, for the Murder of King *Charles* the First, being three of his Judges, which sate in the High Court of Justice, as they called it, and having escaped, and being retaken and brought to the Bar, and demanded whether they were the same Persons in the Act mentioned? They said, they were of the same Names, but there might be divers Persons of the same Names: But they (further) said, that the Court ought not to proceed against them, without having a Record of their Attainder here in Court, as was done in Sir *Walter Raleigh*'s Case, where the Indictment, though long before was (made) a Record of this Court, and produced; and thereupon the Record of the Act of their Attainder being removed by a *Certiorari* into *Chancery*, and thence sent hither by a *Mittimus*, was read unto them; whereupon they pleaded, That they were not the same Persons; and Issue was taken thereon, and a Jury returned immediately to try it, which was done, and they were not permitted to challenge peremptorily; for they are not now to be tried for the Treasons, but (only) of the Identity of Persons, and the Jury found them the same Persons; and thereupon Sentence of Execution was immediately given, and three or four Days afterward they were executed at *Tyburn*. *Levinz*'s Reports, Vol. I. p. 61.

Keling's Reports, p. 13. *Memorandum*, That in *Easter* Term, 14 *Car.* II. *John Barkstead*, *John Okey*, and *Miles Corbet*, three of those Persons who presumed to judge the late King to Death, were apprehended, they then being outlawed upon the former Indictment; and they were brought to the *King's-Bench* Bar, and demanded severally, What they could say, why Execution should not be awarded against them (after the Indictment was first read to them)? And they pleaded, they were not the same Persons; and thereupon, the same Day, a Jury was presently returned, the Court sitting, and they found they were the same Persons, and so Execution awarded, which was after done accordingly.

Note, *So is the Report in the Manuscript, but the Record is of an Attainder by Act of Parliament; but there might be an Outlawry also.*

firſt to be an Indictment, an Information, and *Scire Facias*, (as was in the Caſe of Sir *Walter Raleigh)* all which were pre-requiſite to an Iſſue in Law, as their Lordſhips well knew; ſo that here was a Concluſion without Premiſſes: Yet if it ſhould pleaſe the Judges to over-rule it, he was contented (carrying himſelf with much Reverence and Reſpect unto the Court). To which either the Attorney-General, or ſome other, replied, That Mr. *Corbet* ſaid Truth, as to ordinary Proceedings, but here it was extraordinary, *viz.* by Act of Parliament in a Bill of Attainder; and then cited a Book Caſe of one *Stafford*, who was thus proceeded againſt, ſentenced and executed in *Henry* the VIIth's Time. To which Mr. *Corbet* replied again, he had nothing to ſay to that, but what the Authority of the Nation had made Law, he muſt ſubmit to; and did acknowledge, as Things ſtood, they did proceed according to the Rules given them, and in that reſpect did what was juſt, according to the preſent Law. *But did you not confeſs the Fact*, ſaith one, *by your own Flight?* It being a known Maxim, *Qui fugam facit fatetur facinus.* To which Col. *Barkſtead* anſwer'd, That he, for his Part, fled for fear of an Arreſt, threaten'd againſt him for Twenty Thouſand Pounds for pretended falſe Impriſonment. Mr. *Corbet* ſaid, That he, for his Part, did not fly for Twelve Years together after the Fact done, and that any body who had a Mind to it, might eaſily have ſeized him, it being well known where he was all that time; and when he did fly, it was not prohibited, nor any way unlawful, as conceived, for himſelf, or others, ſo to do; and now that he was return'd again, he knew not that he was an out-law'd Perſon, and, if Occaſion had been, could have been ready to have traverſed any Suit commenced againſt him. And as for what he had done in this Buſineſs, that there he ſtood accuſed for, he ſaid, he was engaged in it by the then Supreme Publick Authority of the Nation, the Lawfulneſs of which Authority, he ſaid, at that Time, was every where acknowledged and reputed ſo to be; and had he not this to plead for himſelf, he ſhould then have thought, that what was done by himſelf and others, had been very wicked and abominable: But the Authority being, ſince that Time, changed, and new Laws made, by which, both the Fact, and the Power itſelf too, by vertue of which it was done, are both ſaid to have been invalid, (though the Law-makers, at that Time, did not think ſo,) he had nothing further to add.

This is a true Relation of this Matter, as near as poſſibly can be, taken from his own Mouth; if any Miſtake be in a Word ignorantly related, or Sentence miſplaced, the Reader is deſired to pardon it.

This Mr. *Corbet* having been heretofore bred at *Lincoln's-Inn*, and known to be a good Lawyer, and late Lord Chief Baron in *Ireland*, and alſo much acquainted, by long Experience, with Affairs of State, as having been a Member in all the Parliaments that have ſat ſince the Beginning of the late King's Reign; and being alſo further known to have been an ancient and long-experienced, ſound Chriſtian, a Man of a very tender Conſcience, and of an holy Life and Converſation, and that as well in his greateſt Proſperity, as in his Adverſity; it was the earneſt Deſire of many, even of all Parties that knew him, fully and clearly to underſtand from his own Mouth (eſpecially now in this Time of his Affliction) what inward Peace, Quiet, and Satisfaction he had in his own Conſcience, touching that Act which he was condemned, and very ſhortly to die for, and which paſſed under ſo many dreadful Names, of the moſt horrid, heinous, wicked, and unwarrantable Act that was ever done, of the vileſt Murder, moſt execrable Regicide, deteſtable and bloody Crime, that Men ever were guilty of, and like unto which none hath been ſaid to have been ever perpetrated in this World before, except the putting of Chriſt himſelf to death.

His Anſwer to this Queſtion was the more deſired, becauſe he being taken for ſo good a Chriſtian, and ſo able and experienced a Lawyer and Stateſman, as is before deſcribed, his Opinion therein would be the more conſiderable, and his Words be of the greater Weight, which ſide ſoever they ſhould fall, whether to the Juſtification or the Condemnation of the Fact.

Now to this Queſtion (which he ſaid he had long before examined thoroughly, and very well digeſted), he ſaid he would make this true, faithful, and ingenuous Anſwer, and hoped he ſhould ſtand to it, and maintain it to his laſt Breath. And although he did find (he ſaid) ſome near Relations were not of his mind in it, yet for his own part he remained ſteady and unmoveable therein; and before ſeveral Witneſſes (which he had now left ſurviving) that heard him, declared as followeth:

1. He ſaid, When he was named and appointed by the Parliament to be one of the Judges, he was not preſent in the Houſe, nor did he at any time give his own perſonal Conſent thereto, or Approbation of it, but rather fully reſolved never to engage in that Buſineſs.

2. When the Bill came into the Houſe, he ſpake againſt it, and gave his Reaſons; nor could he be drawn by any Arguments to appear in the High Court of Juſtice, or allow of their Proceedings.

Yet, 3. The State of Affairs being as then they were, and the Conſequence on both ſides (either of owning, or not owning and joining in that Act), being with much Prayer and Conſideration well weighed by him, he at laſt came to a fixed Settlement in his Mind about theſe enſuing Particulars.

1. That the ſupreme Authority of the Nation, as then it ſtood (notwithſtanding the alterations made in it) being generally accepted and ſubmitted to at home, and owned by foreign States abroad, without any Queſtion made of it from the Body and Bulk of the People (though here and there ſome ſcrupled it, whoſe Intereſt lay contrary), was lawful and ſufficient to warrant all that was or ſhould be done in reference to the late King.

2. That the ſolemn Appeals made to God on both ſides, both by the King on his ſide, and by the Parliament on their ſide, all the time of the War, and anſwered ſo diſtinctly and fully from Heaven, on behalf of the Parliament (as all Men then ſeemed to judge) did further confirm him in the Warrantableneſs of their Undertakings, and Righteouſneſs of the whole Cauſe.

3. That the Foreſight of ſuch miſerable Changes, as by return of the Hierarchy, and the Concomitants and Effects thereof (which he ſaw was aimed at, and did believe was intended by the late King, at leaſt after ſome time) did greatly induce him to look into, and fully inform himſelf about the Matter of the Charge againſt the ſaid late King.

4. That upon mature and long Debates of Parliament; and ſuch as were authorized to ſearch into the Charge aforeſaid, he found things fully proved; and moreover ſaid, That the Matters objected were of a very unuſual and high Nature; but that which principally ſwayed him to do what he did, was the Blood of *Ireland*, and the levying War againſt the Parliament, who were thereupon forced for their own Defence and the Safety of the People (by whom they were truſted, and whom they did repreſent), to take up Arms, and ſo againſt their Wills to maintain a moſt coſtly, dangerous, and unnatural War.

5. That though he was now fully ſatisfied in his own Mind of the Lawfulneſs of the Fact, as well as of the Power by which it was done, and that it was his Duty no longer to ſtand out, but to join with his Brethren as an Actor in it, or elſe he might become guilty of Unfaithfulneſs to the Cauſe of God and his Country; yet ſuch was his baſe and timorous Spirit, that he kept back and would not appear in it; the rather, becauſe he was much ſet upon by his Nephew, Sir *Thomas Corbet* (who then lived in the Houſe with him) not to meddle at all, or have any hand in it. Now this Sir *Thomas Corbet* having a very conſiderable Eſtate, to which himſelf was next Heir, and which (in caſe he ſhould go croſs to his Mind in this Buſineſs) he had Power (by cutting off the Entail) to give away from him and his Children, he was loath to diſpleaſe; for he ſaw apparently which way his ſaid Nephew was bent. Yet,

6. Notwithſtanding this, Conſcience wrought much with him, and would not ſuffer him (he ſaid) to be quiet Night nor Day; for while, on the one hand, theſe carnal Fears and diſturbed Thoughts pulled him from his Duty (ſo he called it), yet, on the other hand, it pleaſed God more ſtrongly to draw him to it, by often bringing and ſetting home upon his Heart that Scripture in *Rev.* xxi. 8. *The Fearful and Unbelieving——ſhall have their Part in the Lake that burneth with Fire and Brimſtone.* This Text did ſo work and work in his Mind, and ſo powerfully prevail with him, that though he had deferred to appear at the High Court of Juſtice till the very laſt Day of the Trial, yet then he durſt ſtay no longer, but made haſte to come in and ſit among them, come what would of it in this World, leſt the aforeſaid Puniſhment of the Fearful ſhould hereafter for ever befal him. And what he now did (he ſaid) he did it with a free and reſolved Mind, and he bleſſed God that had conquered his cowardly Spirit, and enabled him at laſt (though late) to come in and do his Part, and in ſome meaſure to prove himſelf faithful and obedient to God's as well as the Nation's Call herein. And further ſaid, that upon the Grounds before alledged, if all that hath been done were to be acted over again, he would do as he had done, and would not abate an Inch of it; which Words he ſpake with great Soberneſs and Settledneſs of Mind but the very Day before his Execution.

Laſtly, As to the whole Buſineſs, he ſaid he could and did appeal to God, the righteous Judge of all things, that what he did (as far as he could diſcern himſelf) was not out of any ill Spirit towards the late King's Perſon, nor out of any the leaſt Malice or Diſaffection to him, nor yet out of any unworthy End or Deſign of his own; for as to the ſaid King's Lands or Goods, or other publick Title, he never deſired nor endeavoured to get any of them, but always by good Providence kept himſelf free, that neither himſelf, nor any of his might grow rich, or make the leaſt Advantage that way. And as for that neceſſary and publick Act of Juſtice (as he called it), he did never repent at all that he had a hand in it, nor, after all the Searchings of Heart about it, did ſee Cauſe ſo to do, when at any time he had the moſt ſerious and calm Reflections upon it; though he did confeſs, as to the Circumſtances of that Act (the Subſtance whereof he ſaid he muſt always own), he had been compaſſed about with many ſinful Weakneſſes and Infirmities in the managing of it, as he had before in part hinted, which he hoped and believed were all waſhed away in the Blood of Chriſt.

Mr. CORBET's *Behaviour.*

ON the Day of his Execution, when he was finiſhing his Prayer, there was a noiſe at the Door, occaſioned by ſome that haſted to come in (not knowing what he was about), to tell him that he muſt prepare for the Sledge, but that he ſhould be called for the laſt of the three.

In the mean while he fitted himſelf for his Journey; and firſt bethought himſelf of his Cap, ſaying, *Muſt I not carry a Cap to the Gallows?* and ſo looked out the beſt he had. *Truly* (ſaid he) *I had almoſt forgot it; but it may be well excuſed, for I have not been uſed to theſe things.*

Then he took his Bible (which he promiſed to ſend back and give to his Keeper when he ſhould have done with it) and put it into his Pocket, to carry with him as his beſt and ſureſt Friend and Companion both in the Sledge and at the Gallows. Next, he put a little Bottle of Cordial into his Pocket for his Uſe by the Way, if Occaſion ſhould be; *But I hope* (ſaith he) *I ſhall find a better Cordial, elſe I know I ſhall faint, for all this.* This done, and his clean Linnen got on, *viz.* Band and Cuffs, with his Cloak clean bruſhed and fitted about him, and alſo a new Pair of Gloves put on, which his Wife had provided for him, and which he called his Wedding Gloves, he was now in Readineſs whenever he ſhould be ſent for; which a Friend taking notice of, put him in mind of a Speech which fell from him the Night before, ſaying, Sir, you ſaid laſt Night, the Bridegroom was ready, and the Marriage-Supper was ready, and the Robes and Crown were ready, but that you were not ready; methinks you are ready now! and a very trim and handſome Bride! To which he ſmilingly replied, Am I ſo? The Lord make me ſo; bleſſed be God, I can ſay I am willing to it, as I have good Reaſon, for I am ſure 'tis the beſt Bridegroom that ever was that I am going to. And you need not be aſhamed to go, ſaith his Friend, conſidering what Garments you are cloathed with, and how you are decked (alluding to thoſe Words in *Iſa.* lxi. 10.). To which he replied, Whatever we have of that kind, it is all of our Bridegroom's own Coſt; He is not like other Bridegrooms, for he purchaſeth his Bride,

he cloaths her, and he adorns her; whatever Beauty she hath upon her Person, or Love in her Heart towards the Bridegroom, 'tis he only that put it in her.

Some of the Warders at the Door asking if he would please to go? Doth the Gentleman Jaylor call for me? saith he. No, said they. Then, said he, I have not my Warrant yet to go. I must stay for that first; till that come, my Duty is to be passive; it being with me as it was with *Peter*, who was to be carried whither he would not; yet when I am called, I hope then I shall go without further bidding. Then he reminded us of being in the Way of our Duty, and in that to trust God; but take Heed, (saith he) of Neglect of Duty, take Heed of sinful Compliances, of apostatizing from God; take Heed of Superstition, Popery, Idolatry; keep close to God and his Truth; Oh! trust God, trust in him, and then he will never leave you.

And now a Messenger was indeed come, to tell him that the Sheriffs were ready for him: And I for them, saith he; and so presently hastened away, without taking Leave of his Wife; which one perceiving, said to him, Will you not speak to your Wife before you go? O yes, said he; and then turning back, saluted her; and committing and commending her to the Lord, bid her farewell: But she clinging to him, cried out, Oh, my dear Husband! my precious Husband! what an Husband shall I now lose! whom I have not prized, whom I have not improved, as I ought and might have done! Oh, saith she, what will become of me! At which Carriage of his Wife, though some Tears were ready to start from his Eyes, yet he conquered himself, and taking his Wife by the Hand, said, O my dear Wife, shall we part in a Shower? (which Words he had used on Occasion once before) Be contented, said he, God will be an Husband and a Father to thee and thine; with other such like good Words; and so kissing her, turned to his Son *Miles*, whom he took by the Hand, and blessed him also; and then hastened to the Sledge, desiring a Friend to stay with his Wife and his Son, to comfort them.

When he was bound in the Sledge, and ready to be drawn away, one that had shewed him some Kindness in the Time of his Imprisonment, took him by the Hand, and asked him how he did? Methinks, saith he, I begin to see the Lord appearing, looking up to the Skies; which at that time (said he that he spake to) were as clear and bright as he had ever seen them: To this Friend Mr. *Corbet* said, Farewell; and the Lord requite you for all the Civilities that I have received from you.

As he rid along, he carried his Bible in his Hand, with his Eyes much fixed upon the World over him that he was now going to; and being naturally a very black, swarthy, melancholy Man, and aged also, his Countenance seemed sad and dejected at a Distance, which caused such People as knew him not to think his Heart within too was like his Face without; but they were much mistaken; for though he abounded not, nor was lifted up with ravishing Joys, as some have been, yet he had an inward, firm, solid, well-settled Peace and Comfort, which was not now new to him, but which he had enjoyed and lived upon many Years, as is evident by many Passages which came from him even in the Sledge; take two for Instance, 'till more come.

When one asked how it was with him, after he had been drawn a good Part of his Way; He gave this chearful Answer, *I am well now* (saith he), *but I shall be better anon, when I am gotten yonder, above that Place*, pointing to the Heavens before him.

Not long before he got to the End of his Journey, one came from a Friend to the Sledge-side, to tell him, that Endeavours were used to get his Body for Burial. *What care I* (saith he) *what becomes of my Body when I am dead? Let them do what they will with it; I bless God my Soul is safe.*

The several SPEECHES *of Colonel* John Okey, *Colonel* John Barkstead, *and* Miles Corbet, *Esq. at the Place of Execution*, April 19, 1662.

UPON *April* 19, 1662, being the Day appointed for the Execution of Colonel *John Barkstead*, Colonel *John Okey*, and *Miles Corbet*, Esq. who were drawn on three several Hurdles from the *Tower* to *Tyburn*, Colonel *Barkstead* was first brought to the Place of Execution, and then Colonel *Okey*, and then Mr. *Corbet*; who at a good Distance of time, one after another, mounted a Cart, which was prepared for them to stand in whilst they spake to the People.

Colonel *John Barkstead* was the first that ascended the Cart; and as soon as he was in, he lifted up his Eyes to Heaven, and said, *Blessed be God!*— And then immediately one, supposed to be of the Life-guard, cried out very loud, *He is almost dead; if he be not quickly hanged, he will be dead before; therefore hang him, hang him, before he be quite dead: See how he looks.*

But, being much spent, he waved speaking to that; and after he was tied up, finding the Rope very strait, he would sit on the Side of the Cart to rest himself, but could not till the Rope was somewhat loosened. After resting himself, it was expected he would say something before the other Prisoners came, which was at least half an Hour's Distance. The Sheriff, therefore, spake to him to this Effect:

Sheriff. *You must not speak any thing in Justification of such an horrid Offence, for which you came hither to suffer.*

To which Colonel *Barkstead* replied, *I cannot speak much, by reason of the Weakness of my Body; I desire to get as much Refreshment as I can before I speak.*

Then the Sheriff spake to Mr. *Hastings*, who was Under-Sheriff of the County of *Middlesex*, *Will not you dispatch one first of all?*

To which the Under-Sheriff answered, *We use to hang all together.*

Colonel *Barkstead* then lifted up his Eyes and Hands to Heaven.

Then replied the Sheriff, *Let it be according as it used to be.*

Then said the Executioner to Colonel *Barkstead*, *You may be going on in your own Prayers, and lose no Time.*

Barkstead. I shall be but short. And taking something out of a Silver Box, putting it into his Mouth, and lifting up his Eyes, said, *I bless God, I have a better Comforter than this.*

Then being asked by some Person of Quality, Whether he were not sorry for what he had done? He answered, *Sir, I shall be sorry for whatever the Lord convinceth me to be a Sin: When the Lord sets home that upon my Soul, I shall express it unto God and Man; and truly that must be from him alone.*

Then Mr. *Thomas Porter* spake to him, *I am sorry to see you there; but you will be a happy Man within this half Hour.*

Barkstead. I have, I bless God, an Assurance, through Jesus Christ, that I shall be so. But feeling the Cart stir under him, as he did several times before, and thereby the Rope pinching him, he desired it might be eased.

Then Colonel *Okey* was brought towards the Cart; and when Colonel *Barkstead* saw him, he lifted up his Eyes and Hands.

Some of the Sheriff's Officers, when *Okey* came to the Cart, said of him, That he was a lusty, stout, brave Man, as ever fought in *England*.

Then said the Sheriff to Colonel *Okey*, *I hope I need not give you this Caution, That you make no Justification of this horrid Offence, not to justify that Offence for which you are brought hither this Day.*

To which Colonel *Okey* made this Reply: *Sir, I must not lye for God, much less for you; I hope you will give me Leave to speak what lies upon my Conscience, whether I am guilty or not guilty: We will speak something of what lies upon us.*

Then Mr. *Corbet* being at the Cart ready to come up, Colonel *Okey* stooping down to help him up, said, *Come, Brother* Corbet, *how do you?* And clapping his Hand upon his Breast, said, *I thank God, I have it here.* Then speaking to the Sheriff, he said, *May I have my Hat on, or stand bare?*

Which you please, said the Sheriff, *you have your Liberty for that.*

Then Colonel *Okey* addressed himself to speak to the People as followeth:

Colonel OKEY's *Speech.*

Gentlemen,

THE Providence of God hath brought me to this Place, to pay that which every Man oweth. I shall not trouble you with what is superfluous, which is, to tell you of my Family, which of all the Families in *Israel* was the least, and I was the least of that Family. It is not unknown to most here, what Troubles have been in this Nation, and how eminently the Hand of God did appear therein. Among many others that were called forth to serve the King and Parliament, (as then the Cause was stated) I was one, which I did faithfully, according to the best of my Power and Knowledge. I here do bless God, that I was called to that Work; for I am persuaded in my Heart, that it was for the Glory of God, and the Good of his People, however it was turned at last; and if I had as many Lives as I have Hairs in my Head, I should have ventured them all in that Cause. I have nothing upon me as to that; and I thank God, I am fully satisfied as to that Cause: But I shall say no more to that, but only this in general, That as the Parents of him that was born blind, being asked by the *Pharisees* how he came to his Sight, answered, *He is of Age, let him speak for himself*; and so the Cause is sufficiently able to speak for itself. But as to that which I have been adjudged for, and am come hither to give my Life for, *viz.* the Death of the late King, I shall only say thus much, That I think most of you know, that I was none of the Counsel within nor without, neither did I know any thing of the Trial of the King, or who were the Judges, 'till I saw my Name inserted in a Paper; and I did sit there but once or twice: But for any Malice to him, I had no more than to my own Soul, but prayed for him to the last Hour of his Life, as I did for myself; and so I have done for this King also, which is my Duty to do. I have many hundred Times, since I went out of *England*, this two Years last past, and before also, begged with Tears of the Lord, if there were any Iniquity or Malice, or any Thing of that Nature, in what I did, that God would shew it to me; yea, the like I did this very Morning, beseeching the Lord, that if I had any Guilt of his Majesty's Blood upon me, or any Hatred against him, he would reveal it to me, that I might here confess it before you all. But I have nothing upon my Spirit as to that. And whatever other Men did, I shall say nothing to that; as for myself, I can say again, that I got not any thing by it, but remained in the same Condition; I was a Colonel before, and was no more since: I thank the Lord, I am clear in that. (Then making a Stop, he said, There is such a Noise, I cannot speak.) And, Sir, I shall tell you now what is upon my Spirit: I take what hath befallen me as righteous and just from the Lord, for my unworthy walking, for being no more zealous for God and his People, no more fruitful in my Generation, and no more thankful; but as for that Thing, I thank the Lord, I have no Guilt upon my Spirit. And as for all my other Sins, I confess they are many and great; but I thank the Lord, he hath given my Soul the Pardon of them all, through the Blood of Christ, for his Name's Sake, and through the Riches of his Grace, and his abundant Mercy towards me. And now I will only speak a Word to our Friends here. You all know we have had many Troubles, and much Blood hath been shed, and there hath been a Vacancy as to a single Person: But the Nation did earnestly desire him that now reigns; and I wish from my Soul he may reign gloriously and righteously, and reign here so, that he may reign for ever. And now they have the great Mercy they did desire, I wish that they would make a right Improvement of it, and that they would walk in some Measure answerable to that Mercy that they have so much desired. I shall beg this, as a dying Man, That as they have received a Mercy, which they account so exceeding great, that they would walk answerable to it, that God might have the Glory, and the Nation might yet flourish in Peace and Righteousness. I shall beg of these Gentlemen, (some of the Guard) and all others that have a great Affection to their King, that they would pray more for him, and love him more, and that they would swear less, and drink less; for if you were beyond Sea, to hear what I have heard of this Nation, it would make your Hair stand on End, and your Ears to tingle. They say certainly, that notwithstanding the great Answer they have had of their Desires, yet if they go on in the Way of Wickedness and Blasphemy, which they report do abound in *England*, (for my Part, I have been a close Prisoner, and have spoken with Nobody almost since I came) that this Nation cannot stand three Years together: Therefore I shall make it my humble Request, That as this Nation hath flourished and gone beyond other Nations in Piety and Religion, it might flourish ten times

times more than it hath done these many Years upon the same Account. It hath been a Nation that hath professed the Gospel, which indeed hath flourished here more than in any other Kingdom, and so it hath had more Glory and Honour than other Nations; and I desire it may continue, that you may have Peace within your Palaces, and Plenty within your Dwellings. Oh that every Man would study in his Place to fear God, and honour the King, and to give Glory to God, and walk in some measure answerable to those many Mercies they have and do enjoy! And, that as they have what they so much desired, every Man would now beg, that the Gospel may flourish, and that Righteousness and Truth may be in the midst of you! There is something that I shall speak more; I would be loath to speak, so as to offend you in any thing (Then replied the Sheriff, I am glad to hear these Expressions from you). Sir, let me tell you, because it is a very great Matter, and looks like a black Thing that is charged upon us in the Indictment, I should have abhorred it, had there not been a Face of Authority, an Authority that then was owned; had it not been so, I should have abhorred to have done any thing in that Business, as much as any Gentleman here: Therefore, I thank God, I have Peace as to that, and Peace as to all my Iniquities whatsoever, thro' rich Grace and Mercy. And truly as to the Cause, I am as confident even as I am of my Resurrection, That that Cause, which we first took up the Sword for, which was for Righteousness, and for Justice, and for the Advancement of a godly Magistracy, and a good Ministry (however some Men turned about for their own Ends), shall yet revive again. I am confident, I say, that Cause for which so much Blood hath been shed, will have another Resurrection; that is, you will have a blessed Fruit of those many thousands that have been killed in the late War. But I would leave this to all my Brethren and Friends, that they would keep their Places, wait upon God, stand still and see the Salvation of God; and rather suffer than do any thing to deliver themselves by any indirect or unjust Ways. If his Majesty had been pleased to have given me my Life, or if I had come over, or heard (for I had a Warrant for my Return into *England* from the House of Commons; but I fell short two Days, and so was fain to go back) time enough of the Proclamation, I would, through the Blessing of God, have lived quietly, and rather have suffered, than have done any thing against the Law of the Land; and I would say this to all good Men and others, rather to suffer than take any indirect Means to deliver themselves, but to wait upon God, keep their Way, stand still and see the Salvation of God: And God, when it shall make most for his own Glory, and the Good of his People, will deliver, and that in such a Way that himself shall have glory in, and the Gospel shall have no Reproach by. But because some think we are Enemies to Magistracy and Ministry, I shall only say this, That I always (I thank the Lord) did pray both for Magistracy and Ministry, and that you might have righteous Laws established; that so Judgment may run down like a Stream, and Righteousness like a mighty River: And that shall be my Prayer now, That God would give you Peace and Truth, and scatter them that delight in Blood and War.

Mr. CORBET's *Speech.*

WE are now dying Men, and upon dying Ground, and we are now in the Presence of the great God, to whom we are now going: Truly, I desire to speak in his Fear, touching that which we are here come to suffer for. I will only say this, (Mr. Sheriff) Both the levying of the War, and that Act that we are now accused and condemned for, if they had been done without Authority, they had been abominable; and to justify that Authority, I do not come here to do it. The Parliament, the Wisdom of the Nation, that now is, hath decried it down, and said 'tis void; and the Court of Justice, where we have been in Pursuance of their Judgment, hath given Judgment against us. Truly so long as that Act of Parliament stands on Foot, Judges must give Judgment accordingly; but there have been many Appeals about that Authority, and the Nation hath been governed by it, and the Nations about us have owned it, and we are now going to God who is the righteous Judge, and that Word is upon my Heart, *Isa.* xxxiii. 22. Truly Men may judge, and they may make Laws; and it is our Duty to submit to the Laws of the Nation, or leave it if we think them too hard. But whatsoever Laws are made, God is our Judge, and he will judge this Cause, and God is our Lawgiver: It is a Scripture Phrase, *God is our Lawgiver*; and *he is* also *our King, and he will save us: He will judge the Cause of his People:* And I hope that the Minds of sober Men will wait for that Judgment. Truly, Mr. Sheriff, as concerning that common Aspersion laid upon us, That we should be against Magistrates and Ministers; the Lord knows it is my Principle, and I desire there may be a standing, settled Government, a godly Magistracy, and likewise a godly Ministry in this Nation: And I pray God grant that his People may be blessed under them. And truly, for the Magistrate that now is, the Hand of God hath brought him into the Throne: While I have been in other Nations, I have blessed God, and desired the Lord that he may rule for God, and be a Terror to Evil-doers, and countenance the true Professors of the true Protestant Religion, that he may defend both Religion itself, and the Professors of it. Truly there have been many (as they call them) Sects and Heresies, that have sprung up in these later Times; but blessed be God, there have been also great Appearances of God, and much Light is broken out, more in this Nation than I could ever hear of or see in the Nations round about, though they profess the same Religion. I have been among many whom they call Reformed-Protestants; but of true Protestants, such as hold their Profession in their Lives, there are more in this Nation than elsewhere, and they are not to be compared for Number, blessed be God, and the Lord increase them and multiply them daily; for the Glory of the Nation is not in a Multitude of People only, but of such as fear the Lord, and worship God, and lift up his Name: And truly my Desire and Prayer is, That the Gospel, the true and glorious Gospel of God, the Gospel of Jesus Christ, may have a free Course in this Nation, and may be glorified in the Lives of Men, as well as in their Words.

As for the particular Way of Worship that I am of, I shall only say, That in my Judgment and Conscience I have, and do understand that which is called the Congregational Way to be nearest to the Word of God; and I do freely bear my Testimony to the Confession of it, that is extant, which was made at the *Savoy:* But with this, that also of the Assembly of Divines that was made in the Time of the Long Parliament, and the Declaration they made concerning Religion, saving only as to the Discipline-part: As to the other, I do fully subscribe unto it; for I think that the said Confessions are the most clear of any Protestant Confessions (whereof I have seen divers) that are extant; and in foreign Parts they will confess as much.

Mr. Sheriff, as to what I shall desire for the Nation (for truly we are taking our Leaves of it, and we shall see your Faces no more), that which I upon the Knees of my Soul do beg for this Nation, is, That as they are Protestants in Name, and take that upon them in Profession, so their Lives may be answerable. Truly nothing doth more dread my Spirit, and cause me to fear the Wrath of God to come upon this Nation, than when I hear that amongst those which bear the Names of Protestants, there is such Profaneness, Drunkenness, Swearing, and such Abominations that are not to be named, no not among moral Men. The Lord stop the Course of them, as also the Growth of Popery and Superstition, and that the Truth of God may break forth, and that Men may love it; for truly the Gospel is worth the loving, the Truths of God are worth loving: And if we love them, then truly God will love us, and bless us.

Mr. Sheriff, for my own Part, if there were any here that I knew I had wronged, I would ask them Pardon and Forgiveness, if I knew them. I must confess, I have been in many public Actions; I have been of all the Parliaments since the late King's Reign; and in the beginning of this Parliament, I must confess (I being called to it), did think it was my Duty to act according to the Ability God gave me, and to deny myself. I thank God for it, I came with an Estate to the Parliament; and I bless God for it, I spent it while I sat in the Parliament: And truly, I thank God, they cannot find any Estate that I have forfeited; for I have none to forfeit. This Business, that we are here for, I was very far from being a Contriver of. When the Bill came into the House, I must confess, I being a Member of the Parliament, did somewhat wonder at it, and I did speak against it; but when it was passed, and I was named to be a Commissioner, truly, it being done by that that was then called the Authority of the Nation, I did think I was bound to obey in that Respect. I will say no more. I never sat but once in that they called the High Court of Justice; but for that I'll say no more. I do not come to condemn that Authority and Power; neither will I now (because the Parliament, and the Nation, and the Spirits of Men are against it) justify it. (And being a little interrupted, he said) I will not speak to offend any Man. Truly, I thank God, I never got any thing, either of King's Lands, nor Bishops, nor Dean and Chapters Lands; I never knew what belonged to the Trade of buying or selling Lands, I thought I was in a better Way, looking to that Station which God had called me to. And as my Brother said, Let Men hold to their Stations, and to what God hath called them; and so serve God and their Country, and let them not be afraid. And I think it is the Honour of good Christians, and of good People, to be obedient to the Government they are under, and to uphold it to the uttermost. I have not much more to say. If any Man hath done me any Wrong (as I perceived when we came along some People's Tongues were against us), I pray God forgive them. I desire not to open my Mouth against any of those Reproaches we met with. Some I perceived did express their Love, and their Love to my Soul; and I hope God will hear their Prayers. And while we are in the Land of the Living, I shall desire to do as we have done since his Majesty came to the Government. When we were in *Holland*, we did pray for the King and the Government, and desired of the Lord that they might settle Peace in the Nation; which, if we love our Country, we ought to rejoice in, and our private Interests must give way to it. And truly, I shall desire even from my very Soul, that if any Man here or elsewhere hath wronged me, that the Lord would forgive them. And truly the Court of Justice that passed their Judgment upon us, as the Law stands, I think, did according to their Places. And if we may have Liberty in a few Words to commend ourselves to God, I shall trouble you no further; and I thank you for your Civility.

Then Colonel Okey *spake a few Words, as followeth:*

Mr. Sheriff, I will not trouble you with any thing that he hath said, only something which I thought to speak, as to my own Judgment. But this I would leave among you that live in the Land of the Living. I have been in most reformed Places where they call themselves *Protestants*; but I must tell you, there is a great deal of Difference between their Ministers and the Ministers that be in *England*; and so of their Professors. And therefore, as God hath given you such Ministers as scarce any other Nation hath besides, so that you would honour and respect them; as also those that are Professors and godly People; not such as have a Shew only, but those that are really such, that you would countenance them, and honour them; for as for Ministers and People that live according to the Word, I think there are not such again in the World as are to be found in these Nations. I shall add one Word further.

I was, as near as I can reckon, a Major and Colonel sixteen Years in the Army (I only speak that, because I have a Word to say to another thing), I do not know whose Ox or whose Ass I took away in that sixteen Years time; and if I have done any Man any Wrong, I hope and desire they will forgive me, as one that had many Failings. And whoever hath proceeded against my Life, either in *England* or *Holland*, for there was one (who formerly was my Chaplain) that did pursue me to the very Death, where I remained but two Nights, and was going back again (for I had done my Business), but both him and all others upon the Earth I forgive as freely as I desire the Lord to forgive me. I have no

Malice

Malice either to Judge or Jury, but desire that the Lord would forgive them; as also those in *Holland* that sent us over, contrary to what they did engage to my Friends: We will say nothing of them, but pray God that our Blood may not be laid to their Charge, nor to the Charge of any in *England*.

Then Colonel *Barkstead* addressed himself to speak, as followeth:

Colonel BARKSTEAD's *Speech.*

Mr. Sheriff,

I Shall, as near as I can, observe your Order, and not willingly do any Thing that shall give Offence. I must confess the Weakness of my Body is such, which hath not been of a Day, but of a long Time, that it will not give me Liberty to speak much; and I have had this Advantage, that my Brethren have spoken before me; and were I to speak at large, I must speak over the same Things which they have spoken already, and I am unwilling to trouble you with that, because you said your Time was overslipt, and therefore I shall only speak to the Cause as it was at first stated (and, I hope, without Offence, we may say something to that, so far as the Acts of Parliament have sealed it up, or rather left it open). Truly therein I did engage very freely at the Beginning of the War for King and Parliament, and in the Place to which I was chosen, I bless the Lord he made me faithful to those I served: As to what hath been since that, I shall forbear to speak to, only in the general say, That before and since I came into this late Trouble, I have begged of the Lord to give me a Sight of all my Sins, and shew me a Pardon in the Blood of Jesus Christ; which, through free Grace and Mercy, I can say the Lord hath done. I could not have stood with so much Comfort as I do now at this Time, if he had not given me an Assurance of the Pardon of all my Sins; and where he hath spoken Peace, there is none can speak War or Trouble. I conceive it not proper to give you here an Account of my Faith; for if I should, I should go very little aside from my Brethren that have spoken before me: That which hath been my Judgment and my Practice, hath been the Congregational Way; I must own that, and do. I should much rejoyce to see a Spirit answering that great Mercy that the Lord hath given to this Nation; I mean that great Mercy that he hath bestowed in giving them the Gospel, and that in such a Manner, as truly we, tho' we have been some hundreds and thousands of Miles among the Protestants abroad, yet I do not know it to be so pure as it is in this Isle, blessed be the Lord; and I hope to the Nation of *England* the Lord will give Hearts to walk accordingly.

And as to the Business of the Government of this Nation, as it now stands, I have prayed for it, and can pray for it, and shall, as long as I have Breath, pray for it; and do, from my Soul, desire that the Lord would bless the King, and give him a Heart to rule for him, and his Glory, and then I am sure the Lord will prosper him.

Indeed, as to those that fear the Lord in the Nation, I could wish that the Lord would settle them, and make them of one Mind; but that is the Work of the Lord, and it must lie there; and truly he will do it in his Time. I must confess, I speak the rather to that, because there hath formerly been something acted by me towards Persons that were not of my Judgment, which I have seen since was very hard; and I bless God I have seen it, and have been sorry for it: And therefore I do desire, that all that fear the Lord, would make it their Work and their Business to study to love God, and to love one another, and to love the Nation wherein they live, and to give no Disturbance to it: For certainly, Sir, I should leave this, as that which the Lord hath settled upon my Heart; their Work is to sit still, yea, their Strength is to sit still, for the Lord will do his Work in his own Time; and when he comes to do the Work, there is none shall hinder. I think you have had all Experience of it in the late Works which the Lord hath done; for I must own it his.

Indeed, Sir, I am sorry that my Weakness of Body doth prevent me from speaking more to you; yet I do bless God that I have this Opportunity. All I shall say further is, That there is a Truth (and I hope I may speak it without Offence) that is much upon my Spirit, and I am confident I shall speak it without any Offence at all. I think we are all here Christians, and there is none here (I think) but saith the Lord's Prayer, and says, *Thy Kingdom come, thy Will be done in Earth, as it is in Heaven, &c.* and I hope they go through the Prayer, and say why they do pray that Prayer; and also say, *For thine is the Kingdom, the Power and the Glory, for ever and ever. Amen.* God hath given the Kingdoms of the Earth to Jesus Christ, he shall reign; and happy and blessed is that King and Nation that hath him for their King. And certainly, for His Majesty that now is, to reign under Jesus Christ, is no Dishonour at all to him: For Christ doth, and shall rule over all the Kings, Princes, and Nations in the World. And therefore, indeed, this is that Kingdom that is most certain, and that we do desire, and all pray that it may come; and I do wish that all Persons would have a Tenderness, and not be at Enmity with, nor hate, nor, as much as they can, cut the Throats of those that own that Kingdom, and the Coming of that Kingdom.

As to other Things, there hath been so much said, that I shall forbear speaking; only this, as to the Business of the King, I bless God I can say it, I was no Actor or Contriver, either within or without. I was many Miles from this Place when that was doing: I was put in by the Authority that then sat, and I was called and chosen to that Work; and truly, what I did, I did without any Malice, without any Contrivement in the least; and did, even to the very last, pray for him: And since His Majesty, that now is, came to the Throne, I have, as I have prayed for my own Soul, prayed for him, and that he may reign in Peace and Righteousness, to the Glory of God, and the Good of all the People of the Nation. I shall not trouble you with more, because I see your Time is past, and my Weakness is such, that I am necessitated to break off.

Then Col. OKEY *spake further, as followeth.*

Mr. Sheriff,

IT is not only our Judgments now, but it was our Practice when we were beyond the Seas, we did shun any Disputes, nay we avoided Occasions of seeing our own Countrymen, because we would have nothing to do with the Affairs in *England*, but to pray for them, and to persuade to be quiet, and to sit still; so that we may say, as *Paul* did in another Case, *They neither found us in the Temple disputing, or wrangling, or stirring up the People*; only our Work was to pray for them.

Then Mr. *Corbet* said, "Now we have done speaking to Men, we may "now speak unto our God; truly, he must help us, and give us his own "Spirit: Men may say Prayers, and read them, but to pray in the Spi"rit, and to pray so, as to be accepted with God, requireth much "Strength and Assistance from him." Then Mr. *Corbet* addressed himself to Prayer, which was very long. The Conclusion was omitted, because of a bustling among the Horses.

Then Col. *Okey* addressed himself to Prayer.

Then Col. *Barkstead* addressed himself to Prayer, having first spoken to the Sheriff these few Words following.

Mr. Sheriff,

"I do see your Time is spent, and we are drawn up into a very narrow "Compass; and I hope you will take my Word now as before. I shall "only speak a Word or two unto the Lord, and no more."

Then Col. *Okey* spake a few Words more, as followeth:

"I did break off Duty, because you desired it, and I would not be "troublesome to you."

Then he very earnestly expressed himself further, as followeth:

"O love the Lord, and hate all Things that are evil. I have found "by Experience, more Evil in the least Sin, than Good in any Thing "this World can afford; therefore I beg it of all that are here, to love "God, and to hate That that is evil. The Lord give you Peace and "Truth! I hope our Relations shall not fare the worse for us, but that "you will shew them Kindness. And as to what my Brother said, I thank "the Lord, I have the Assurance of his Love, and the Pardon of my "Sins through the Riches of his Grace, and free Love in Jesus Christ."

After this, Col. *Barkstead* called a young Man, who was known to him, and taking a Silver Box out of his Pocket, he charged him to give it to his Daughter.

Their Speeches and Prayers being ended, the Executioner cleared the Cart of the rest of the People who were gotten in, and then pulled down their several Caps over their Eyes, and upon the lifting up their Hands, the Cart was drawn away; at which Time, Col. *Barkstead* especially was heard to say, *Lord Jesus, receive our Souls!* And after he had hanged for a little Space, he lifted up his Hand.

That which many did especially take Notice of, was, That there was not so much as the least Attempt made by any to raise a triumphant Shout upon the drawing away of the Cart; but there rather appeared the Symptoms of an universal Face of Sadness in that vast and generally tumultuous Assembly, who were the Spectators of their several Deaths.

They all hung near about a Quarter of an Hour: The first that was cut down was Col. *Barkstead*, who was quartered according to the Sentence; the other Two hanging all the while. The next cut down was Col. *Okey*, Mr. *Corbet* hanging still, who, after Col. *Okey* was quartered, had the Execution done upon him also, according to the Sentence. Their several Quarters were brought back to *Newgate*, about Five of the Clock in the Afternoon, to be boiled.

A brief Account of Col. OKEY's *Funeral.*

WHEN Col. *Okey*'s Body was quartered, it pleased the King to send a Warrant to the Sheriff of *London*, to deliver the macerated Body to be buried where his Wife should think meet; which Thing being granted, without Petition or Application from her, or his Relations; and the Rumour of his Funeral suddenly flying about the City, and the Place appointed at *Stepney*, (where his first Wife lieth in a fair Vault, which he purchased formerly for a Burying-Place for him and his Family,) there was a numerous Concourse of sober, substantial People assembled to *Christ-Church*, to attend the Corpse, and some Thousands more were coming thither to that Purpose; so that there were in View about Twenty Thousand People attending that Solemnity at, and coming to the Place aforesaid, who in a solemn and peaceable Manner behaved themselves, as that Affair required: Yet it so pleased the King to revoke his first Grant to Mrs. *Okey*, and by the Sheriff of *London* to disappoint and send Home again the Company attending the Funeral; which the Sheriff with much Harshness, and many bitter Words, did his Work. The People, though much troubled at the Disappointment, yet, so soon as they understood the King's Pleasure, departed, and left the mangled Limbs to the Disposal of them that had devoted them to the Gibbet and Ax: The Company left many a thousand Sighs to attend him to his then unknown Grave.

That Night the Body was carried to the *Tower* of *London*, and there, by Mr. *Glendon*, Parson of *Barkin*, was buried with the Service-Book, afresh wounding his bleeding Limbs thereby; but Rapes are imputed only to the Ravisher. Mr. *Glendon* could not but say, that his Body was laid there, in sure and certain Hope of a joyful Resurrection. His Testimony was true, though a Poet of their own. And now there he lies, and the *Tower* of *London* is his Tomb. His Epitaph he partly writ in the Hearts of Thousands at the Place of Execution.

For a particular Account of the Characters and Behaviour of the Regicides, and their Trials, (as given by their Friends) see Ludlow's Memoirs, *Vol.* III. *p.* 59, *to* 93, *and p.* 99, *to* 104.

NUMBER IX.

The Speech and Deportment of Colonel JAMES TURNER*, *at his Execution in* Leadenhall-Street, January 21, 1663, *who was condemn'd for Felony and Burglary, in breaking open the Houſe, and robbing of Mr.* FRANCIS TRYON, *Merchant, living in* Lime-Street, LONDON.

About Eleven o'Clock, Col. Turner *(attended with Mr. Ordinary of* Newgate, *and another Miniſter,) was drawn in a Cart to a Gibbet erected in* Leadenhall-ſtreet, *at* Lime-ſtreet *End; where coming, Col.* Turner *call'd the Executioner to him, told him, that his Friends were deſirous of all his Cloaths, and that in Conſideration thereof he gave him* 50 s. *and* 2 s. 6 d. *to drink, and about* 15 s. *to the Serjeants and Yeomen, attending to ſee his Body and Cloaths deliver'd to one Mrs.* Smith *there: And ſtanding in the Cart, ſaid as followeth:*

SIR *Richard Ford*, and you, the other Mr. Sheriff, and all you Gentlemen: I am come hither to pay that Debt I owe, and that every Man owes to Nature; 'tis the juſt Hand of God upon me for my Sins, and there is no Man hath done me Wrong in it; and truly, it is my Sins, and the greatneſs of my Sins (and that I am very ſenſible of) hath brought me hither; and the greateſt Sin that troubles me, and lies upon me, (which I hope the Blood of JESUS CHRIST, nay, I am confident, the Blood of JESUS CHRIST hath waſhed all my Sins away,) is that Sin which I was much addicted to, and that was the Sin of Prophaneneſs; of blaſpheming God, of taking his Name in vain. It is truth, I muſt not only accuſe myſelf, but, in ſome Senſe, give you the Truth of my Conſcience. I never heard any Man or Woman, or whatever they were, ſwear in my Life, but I did tremble to hear them: For keeping of Company with Gentlemen of Honour (they were Men of Quality, though that were an ill Quality in them) was the Occaſion of it. I never kept Company with any poor, baſe, inferior People, with any Thief, or any ſuch like baſe Perſon, in all my Life, but fled from them, and avoided them, 'till this Accident. Truly, thoſe poor Men engaged in it, I muſt free them, I brought them into this Buſineſs clearly and freely; and I beſeech you, Mr. Sheriffs, as I am a dying Man, that you will help thoſe People in this Buſineſs; poor ſilly Men! As I was telling you, for that great Sin of Swearing: Keeping Company with Perſons that did ſwear, I did get a Habit of Swearing, though I hated it and loath'd it, when I obſerved it in myſelf, and yet may be, did it again, forgetting preſently and not obſerving, being of a haſty Nature. It was my Raſhneſs, and my Inconſiderateneſs, that hath brought me hither. Gentlemen, it is expected by all the City, and by all the World, that knows me, that I ſhould make ſome great and notorious Confeſſion; it is Truth, I muſt, and freely do here confeſs, as I ſaid before, that 'tis my Sins in general, and that Sin of blaſpheming God's Name; I do charge myſelf particularly with that, as the Occaſion of bringing me hither: As for the Fact itſelf, I do tell ye, it was my own Act, my own Contrivance, and the poor Souls that are yonder, knew nothing of it.

Gentlemen, you will live when I am gone: There is my two Sons; I here declare, as I expect Mercy by-and-bye, at the Hands of my Saviour and my God, they are as innocent as any Perſon that looks upon me. For the youngeſt, my Son *Ely*, he never knew or heard of one Penny of the Money, or Buſineſs at all; therefore he is clear; he was in his Bed that Night it was done, and in the Morning it was removed from my Houſe: For the elder, he never knew of any Monies, or any thing of it; only I did tell him, that it was a Merchant's Money that was broke, and that I would ſecure it for his Wife and Children; ſo that he was clearly innocent of any thing of the Fact of the Robbery of the Houſe; he knew not that it was Mr. *Tryon*'s Money, but did carry that Money with me to *Tower-Hill*, as I bid him; ſo that he is as innocent as the younger. You underſtand me, Mr. Sheriffs; if you bid your Servant take ſo much Money, carry it, and diſpoſe of it as you direct him, What is it to him how you came by that Money? So that I ſay, this elder Son, he is (I ſpeak in the Preſence of God) as free as the other.

I do beg and beſeech you, Mr. Sheriffs, in the Bowels of tender Mercy and Compaſſion, that you would go to the Lord-Mayor, to the Court of Aldermen, that theſe two poor young Men may be diſcharged; let them not lie there until the next Seſſions, among Thieves and Murderers, for they will be utterly undone. They are come from the Loins of good Parents; my Father was an ancient, Reverend Divine, a Parſon within eleven Miles of this Town, a godly Miniſter, forty odd Years Miniſter of one Pariſh; no Man more beloved than he, a Man of Charity, and for Peace, never ſuffer'd them to go to Law; he was Juſtice of Peace amongſt them, Mediator for them; if any Poor wanted any thing, they came to him, he relieved them; he did all the Poor's Buſineſs, and compoſed the Differences of the Rich likewiſe: I am the Son of that Father, though an unfortunate Son. My Wife was a Gentlewoman's Daughter in *Dorſetſhire*, her Mother had a great Portion, and is yet living; they are of the Family of the *Foyles*, 8000 *l.* the old King had of her Uncle, which was lent; they were Perſons of Quality. I ſay, theſe Children, they came from the Loins of good Perſons. This I ſpeak in reference that you will take that fatherly Care, that theſe two poor Boys may be turn'd out of Priſon. Their Mother hath nothing to ſupport them: Suppoſe it your own Wife's Caſe; add not Affliction to Affliction; reſtore her Children to her this Night, let me beg it, that God may be praiſed and glorified in the Truth of all Things. Will you promiſe it, Mr. Sheriffs, that you will endeavour it?

Sir *Richard Ford*. I do; I have been ready at all Times to promiſe you any Thing which was in my Power to perform; but aſk not that which is not in my Power to grant: You deſire they may be diſcharged To-night.

Turner. That's but comparatively; as ſoon as poſſible.

Sir *Richard Ford*. I do promiſe you, that this that you have declared concerning your Sons, ſhall be communicated to the proper Judges, and I will endeavour that they may be put out of our Gaol.

Sir *Richard Rives*. And I will uſe my Endeavours in the Thing.

Turner. Pray do, they know nothing of it; pray put them out, my Wife will want them; ſhe hath no Comfort left, and this will ruin her.

Sir *Richard Rives*. We will do our Endeavour; proceed on.

Turner. I have done, that's for the Children; then for *William Turner*, what he did, he did at my Inſtigation; he acted this at my Entreaty, it was wholly by my Direction, therefore let the poor Man be likewiſe diſcharged, if there be no other Thing againſt him but this Fault.

Sir *Richard Ford*. We will promiſe that we will take all Occaſions to give an Intimation to the Lord Chief Juſtice what you have declared, in extenuating of his Crime, as he was a Hireling of yours.

Turner. I have told you that it was my Sins that hath brought me hither; and truly I muſt deal really with you, this Nation is very full of Sin, of crying Sins, of Sins, that (without God's wonderful Mercies) the Land will ſuddenly mourn by his Hand: I have every Year expected the ſweeping Plague to come and take away two-thirds of the Nation for the Sins that lie upon us; and truly, notwithſtanding the Miniſters of God do preach, and call, and cry aloud, yet Nobody regards them. Truly, from the Magiſtrate to the very Peaſant, there is abundance of Neglect to the true Service and Fear of God, that my Soul has bled and groan'd within me, as I have gone up and down the Streets, and as I have lain in my Bed. And I muſt ingenuouſly confeſs to you, that I have not once or twice, nor a hundred Times, but a thouſand Times, wiſh'd myſelf diſſolved, and in another World. I have been ſick of it, not for any Want, but with the mere Trouble, the Diſlike that did ſo diſpleaſe me, to ſee all manner of Buſineſs in Tumults and Diſorders, and Sin, and all manner of Wickedneſs; that truly I have had no Pleaſure (theſe latter Years) in the World; indeed I have not. I have (to my poor Wife) ſaid many a hundred Times, Lord God, that thou wert in thy Grave, and I too, were it not for theſe poor Children; truly, I could beg it of God, ſeeing all People are in Combuſtion, none tied in Love and Amity. When I was a Boy, there was no ſuch Doings; my Father, I told you, was a Miniſter, there was eight or ten Gentlemen, adjoining Families, who kept a Houſe of Hoſpitality, loving Friendſhip, Peace and Quietneſs; but now there is no ſuch thing in the World: It is a new World, a World of Malice and Difference; and 'tis to blame, that Brethren do not hang together in Unity.

It is expected, that I ſhould declare here, as a dying Man, ſomewhat to free myſelf from thoſe Aſperſions, Accuſations, and Calumnies, that have been laid upon me; thoſe Marks with black Coals that People have laid upon me; I do declare to you, there are a great many Scandals that lie upon me. I ſhall not juſtify myſelf at all, but rather accuſe myſelf, that I am, as St. *Paul* ſaith, *The greateſt of Sinners*. But for thoſe Things that are laid upon me, I muſt clear my Family and my Reputation, as I can before God, and in JESUS CHRIST. It is laid upon me, that I ſhould take 200 *l.* of Dr. *Hewyt*'s Lady, for to aſſiſt her in the helping her Huſband, that was, in the getting him a Pardon or Reprieve. To that I anſwer, (I know not whether I ſhew'd you, Mr. Sheriffs, my Lady's Certificate or no; I heard not of this Buſineſs 'till within theſe two Nights) I never heard of her, nor her Huſband, in ſuch a manner; no, I would not have had that Sin mix'd with my Blood, not for ten Thouſand Worlds; I ſhould have thought, whenever it had enter'd into my Cogitations, I ſhould have thought myſelf eternally loſt: But about that, I ſent Mr. *Gray*, of *Black-Friers*, who rode thirty-two Miles the other Night, and he hath brought a Certificate under her Ladyſhip's Hand to the King; which Certificate, if they will go to my Wife, they may have it, and print it. She writes, ſhewing it to the King's Moſt Excellent Majeſty, That ſhe was inform'd, that *James Turner*, Gent. a Priſoner in *Newgate*, is accuſed for taking 200 *l.* of her towards the reprieving of her Huſband; ſhe doth declare ſhe never knew him, nor heard of him, therefore ſhe is bound in Conſcience to free him; and ſo ſhe humbly takes her Leave. This is atteſted by that Gentleman, with an Affidavit under the Hand of Sir *John Brampſton*, Knight. She got a Letter from Secretary *Thurlow*, wherein he writes, and ſets forth all the Buſineſs, That one Col. *Whetton* had 235 *l.* of my Lady *Hewyt*, to procure this Buſineſs; and that *Whetton* did pretend, that he had given *Thurlow* a Hundred Pound of it to that Purpoſe, which he there, under his Hand, denied that he ever received one Penny, directly or indirectly; ſo that *Whetton* was the Perſon clearly accuſed, and ſhe ſent me Word, ſhe is ſuing him for the Money; ſo for that I hope I have vindicated myſelf before God and the World.

In the ſecond Place, there is another Calumny thrown upon me, and that is, That I ſhould cozen or deceive the King that now is of ſome Money, when I was beyond Sea with him; truly, it is well known to Thouſands

* This Speech ſhould follow his Trial, in Vol. II. p. 523.

of the World, I was never out of *England*, never beyond Sea with the King, never cozen'd him of a Penny; that I have ſerved him and his Father with all the Subſtance that I had, with my Blood, and with all my Fortune and Goods, as a hearty Subject ſhould, and I pray God receive my Soul but with a Drop of his Mercy, ſo ſure as I ſerved the old King, and pray'd for him, and loved him.

The firſt Commiſſion that ever I had, was eldeſt Captain of Horſe to *William* Marquis of *Newcaſtle*, in his own Regiment; I gave him the Troop, Fourſcore and ſeventeen Men, well Horſed; I never received one Penny Advance for the ſaid Troop, and but one Week's Pay for myſelf and Officers, and three Weeks Pay for my Troopers, in all my Life, not a Penny more: I ſerved him faithfully four Years, or thereabouts. I was a Priſoner at *London-Houſe*, at *York*, in the *Tower*, at the Council of State, the Court-Martial, and the Council of War of *Oliver*'s: I was a Priſoner at *Luton* in *Bedfordſhire*; bringing the King up from *Newark* to *Oxford*, I was wounded, ſhot in the Neck, and taken Priſoner: And 'tis very well known by Mr. *William Cotton*, who is one of the Gentlemen Harbingers of the King's, he is the ancienteſt to this King, and hath ſerved his Father in that Office; it was his Fortune to be hard by when I was ſhot, who was then a Stranger to me, but he being one of the King's Servants, and hearing a Lieutenant Colonel of the King's was ſlain, he came in; after I was ſhot, I was crept into a Hedge among Briers and Thorns, ſo deep, that he was forced to cut a Way to come at me, and ſo drew me out, or I had died there. I was Priſoner at *Luton*, ſo to St. *Alban*'s, where I lay in Cure in the Compter, 'till it coſt me, my firſt Penny reckoning, ſixty odd Pounds in Gold; they truſted me, and took my Word, 'till I could ſend to *York*, where my Wife lived, nineteen Miles beyond *York:* When I was able to ride, I was brought to Town, put into *London-Houſe*, where I abided, and paid my Ranſom, no Exchange would be allow'd. The King that is dead, (of bleſſed Memory) ſent three Exchanges for me, his own Trumpet, Sir *Marmaduke Langdale*'s Trumpet, and my own Trumpet. The Committee at St. *Alban*'s returned the Trumpeters Word that I was dead, for my Wounds were mortal, and ſo I believe they did think I was dead. Afterwards I had Command of more than one Troop, and I was Lieutenant-Colonel to Sir *John Preſton*, and was eldeſt Captain to the Marquis of *Newcaſtle*.

Sir *Richard Ford*. I have no Pleaſure to interrupt you; if you have any thing to ſay, that may fit you for your Change, as Marks (for avoiding theſe Inconveniences,) to the People———

Turner. I have done, Sir *Richard*.

Sir *Richard Ford*. I do not apprehend this a proper Work for a dying Man; in good Earneſt, methinks, it is not a proper Work, for you to give this Narrative now of the Affairs in the Army.

Turner. I have but a few Words more; I have wholly told you, that it was my own Contrivance, and Nobody's elſe, that I come hither, and therefore I do juſtly ſuffer here by the Hand of God and Juſtice; and I do deſire all Chriſtian People, that either hear me, or ſee me, or ſhall hear of me, that they will take Warning by me; it is the firſt Offence of this Nature that ever I had to do withal in my Life. God is my Witneſs, as I ſaid before, I never knew a Thief, or diſhoneſt Man, but I avoided them: But I ſay, and I could wiſh with all my Soul, and I deſire it earneſtly, that all People would take Warning by me this Day, and to avoid, as much as may be, all Sins in general: And I muſt declare to you likewiſe, that if it had pleaſed God, that two of the Officers had not met me, and arreſted me in St. *Mary-Axe*, between Two and Three of the Clock, and carried me here to the *Hoop*-Tavern, where they ſtaid me, Mr. *Tryon* had had every Pennyworth of his Goods and Money, and not loſt a Farthing, nor a Hair of his Head; but God forgive them. A great deal of Blame hath lain upon me about thoſe Villains, who were half drunk, and beat Mr. *Tryon*. I ſay, he had *had* all his Goods again. God above, that hears me, knows my Soul, it was not intended to rob him, or to hurt him, it was to ingratiate myſelf: the Reaſons I told him Yeſterday. He is the worſe Man, the beſt part of 10,000*l.* ſince his Wife died; and I had lately diſcover'd which way and how: I have told him of the Perſon, but this is not a Place to name him, or ſpeak of theſe Things; I hope God will give him Wiſdom to avoid Dangers, and to make Good of what I told him Yeſterday; a worſe thing will come; for he will be robb'd indeed, if he have not a Care: He ſhould have been robb'd about a Year ſince, and he did employ me to enquire after it, and diſcover it: I have given him Warning ſeveral Times: He is an honeſt, brave Gentleman, a good Chriſtian, and an honeſt, charitable Man. But, Mr. Sheriffs, aſſure yourſelves, ſo ſure as I am going to Heaven, I ſhall be there in Glory, ſo ſure had Mr. *Tryon* (if I had not met with theſe two fooliſh, timorous Officers) have had his Goods and Money again, there never had one Word of this Buſineſs been known. 'Twas a ſad Fate, that theſe two Fellows, out of a little Fear, ſhould be the Occaſion of my coming hither; but God forgive them; *Stubs* and *Lyon*, I mean, theſe two Villains, I have Nobody to thank for my Blood, but them; and yet do I free them, and freely forgive them: And I forgive the whole World, as freely as I deſire GOD and CHRIST JESUS ſhould forgive me. Mr. Sheriffs, are you ſatisfied in this? Would you have me ſay any more touching the Fact?

Mr. Sheriff. It is Satisfaction to us, if you are ſatisfied yourſelf.

Turner. This Morning, as I was coming out of the Priſon, to add Scandal to Scandal, one came and charged me I ſhould clear myſelf about a Fire in *Lothbury*, in the new Buildings, whether I had any Hand in that; the Lord Jeſus Chriſt knows my Soul, 'till even now they aſk'd me the Queſtion, I never thought of it, but was then heartily ſorry, and in my Bed when I heard of it.

Another ſent me a Letter, but I tore it, one *John Marſhall*, touching ſome Money that was loſt in *Coleman-Street*; he might as well have aſked the Perſon to be born, as have aſked me, for I knew not of it. And one brought a Deed of one *Katharine*, I forgot her other Name, alack, I know nothing of it. There was another large Paper put into my Hands, touching a Man that died in my Houſe, one *Turner*, a tall, proper Gentleman, a Clothier of *Kent*; he came to my Houſe, and deſired me to furniſh one *Daintry* with five hundred Pounds, which he had a Place at the Cuſtom-Houſe for: This *Turner* was a Stranger to me, only a Name-ſake: It is thought, as by the Paper was hinted, that he ſhould have ſomething

put in his Drink, which ſhould occaſion his Death; he drank nothing at my Houſe, more than what my Wife and ſelf, and two or three honeſt Gentlemen, that were there. He told my Wife once, *Couſin*, ſaith he, *I am very ill, pray give me a Cup of your Water*; he had drank a Glaſs or two of Wine; there was but one Bottle among five of them; and ſoon after, this Gentleman fell aſleep, with his Hand on his Cheek, and never waked again: He died of an Apoplexy, or Lethargy, as the Coroner found it. I muſt clear myſelf of this, becauſe I have received a Paper, it was at the End thereof hinted, Whether I did know if *Daintry* was not concern'd in this Buſineſs? The Man could not put any thing into our Drink ſure; I have heard of your *Spaniſh* Tricks, but I muſt free *Daintry* of that, according as I underſtand it. He was to do *Daintry* the Courteſy, and ſurely he would not ſo reward him. I believe *Daintry* was as free as any body; but the Jury and Coroner did return, that he died of God's Viſitation, a natural Diſeaſe, and I hope I have ſatisfied the World of that.

Mr. Ordinary of *Newgate*. Pray, Colonel *Turner*, know you nothing of a Glaſs Jewel, delivered to the Counteſs of *Devonſhire*, in the room of another?

Turner. I know nothing of ſuch a Thing; I never had any Jewels of her in my Life; ſhe is an honourable Perſon, ſhe will not ſpeak of ſuch a Thing.

I will now give Account of my Faith. I have been bred up a true *Proteſtant* of the Primitive Church of *England*; my Father bred me, and inſtructed me very ſtrictly in the Law of God: I will not tell you when I came to 'Prentice, I'll let that alone: I am free of the Company of Drapers; and I have lived civilly and honeſtly in St. *Martin*'s, at the upper End of *Cheapſide*; I am ſure there are a Thouſand ſorrowful Souls and weeping Eyes for me this Day.

Sir *Richard Ford*. Pray put that little Time that you have to ſpend here to good Uſe, and leave off theſe Relations.

Turner. Have a little Patience, let me ſatisfy the World of ſome Particulars; I was a conſtant Church-man, 'tis well known to my Pariſhioners; I never durſt ſee a Man in the Church with his Hat on, it troubled me very much. If a Man comes before a Judge on Earth, he is not ſuffer'd to wear his Hat, much leſs ſhould they before the Magiſtrate of Magiſtrates, the God of Heaven.

Sir *Richard Ford*. Hear me one Word; thoſe reverend Perſons about you, methinks they ſhould admoniſh you to leave off theſe Diſcourſes.

Mr. Ordinary. We preſs to the Condemnation of a Man's ſelf, that he might be juſtified in God's Sight.

Turner. Mr. Sheriff, I will hold you but a very little while longer; I do here truly confeſs that I have been, as I have ſaid, a very great Sinner, guilty of all the Sins in the World.

Mr. Ordinary. Speak to ſome Particulars.

Turner. Pray, be quiet, can ye?———Eſpecially that of Prophaneneſs; I am truly ſenſible, heartily ſorrowful for my Sins; and I do beg of God, of his infinite Mercy, through the Merits of Chriſt, who died for me, to waſh away all my Sins, and all the Sins of this People here preſent, and all the Sins of the whole World. I do beg, that God will open the Heart of any Man that ſtaggers in Faith, to confirm him. I do ſay, and pawn my Salvation upon it, That no Man dare gainſay that Jeſus Chriſt died for Sinners, of whom I am Chief: That Man that lays hold upon Chriſt by Faith, the Gates of Hell ſhall never prevail againſt him. Truly, I am thought to be a great Drinker, a Company-keeper; my Occaſions did call me to Taverns, but I bleſs God, I think there is no Man (pardon me, for I will not ſpeak it with Oſtentation), I hope no Man ever ſaw me diſguiſed in Drink, to my knowledge, except it was when I was a Boy. I am truly, heartily, and ſincerely ſorrowful for my Sins: I do confeſs them before my God, and the whole World, that the leaſt of my Sins are able to throw me into Hell; but that the Blood of Jeſus Chriſt, that doth waſh away the Sins of the whole World, hath purged and cleanſed mine. I ſay, I do here heartily, ſolemnly, and wholly confeſs my Sins, and am truly ſorrowful for them; that is my Confeſſion, with more Trouble of Soul than I am able to expreſs. Here I have made my true and faithful Confeſſion. In the ſecond Place, I have made Reſtitution, ſo far as in me lay; the Gentleman hath every one of his Jewels again, every Farthing-worth; nay, he hath two Thouſand Pounds worth more than he miſs'd, therefore there was no Intention of Felony: But my ſad Fate in meeting with thoſe two ſad Officers, God of his Mercy everlaſtingly forgive them——

Mr. Ordinary. Expreſs your Charity as to the World.

Turner. Do not put me out of my Way, I muſt go Step by Step. Firſt, I have given you my own Confeſſion: Secondly, I have made Reſtitution, I have reſtored all to my Power: The third Thing that is behind of a Chriſtian, is my true and unfeign'd Repentance, and my Charity to the whole World; that God, that is the Searcher of all Secrets, that tries the Reins, that knows all the inner Parts, knows my Soul, that I long and deſire to be with Jeſus Chriſt in Glory.

Mr. Ordinary. Which is beſt of all.

Turner. I am in perfect Charity with the whole World: It is expected by ſome, that I ſhould fall upon ſome Perſons to recriminate on them; I ſhall not do it, the Lord God of his infinite Mercy forgive them. It was reported to His Majeſty, that on *Sunday* laſt I was drunk, and that I abuſed this reverend Perſon *Mr. Ordinary:* This News was brought me by ſome that were preſent when the King was told ſuch Stories, that I was drunk, and ranted, and ſwore God damn me, and God ſink me, and that I had five thouſand Pounds, and I would have a Pardon, and cared not for the Buſineſs, and would have a Pardon when I pleaſe. This great Reproach was thrown upon me to the King, and that, with ſome other Scandals, has taken off the King's Affections: But this is altogether falſe; for Mr. *Hicks*, my Landlord, can tell, that on *Sunday* Morning he would have had me drank my Morning's Draught; I told him, No, I would not drink: I only drank one ſmall Cup of Cyder in the Morning, two little Glaſſes of Sack, and one Glaſs of Claret at Dinner. I went to Church with this reverend Gentleman, where I received a great deal of Comfort to my Soul, for which I thank him: He made a ſound ſcholar-like Sermon, and fit for Perſons in our Condition. I did perceive they wanted a Clerk, and I took upon me to officiate

as Clerk, and I was happy I had that Opportunity. I came home, and remain'd in my Chamber. About Eight or Nine o'Clock, Juſtice *Stringer* came to me in *Chancery-Lane*, and two or three Knights and Perſons of Quality, eight or nine in all: They had one Bottle of Sack among them, of which I drank one little Cup: And for the ſwearing of thoſe Oaths, I did not do it, I hate them, they were Untruths, and the Lord forgive them that raiſed that Scandal.

Sir, I muſt deſire that you would now join with me in Prayer; but I have forgot one Thing, it is ſhort: That Night the Seſſions broke up, I was put in the Hole: It is a moſt fearful, ſad, deplorable Place; Hell itſelf, in Compariſon, cannot be ſuch a Place; there is neither Bench, Stool, nor Stick for any Perſon there; they lie like Swine upon the Ground, one upon another, howling and roaring; it was more terrible to me than this Death: I would humbly beg, that Hole may be provided with ſome kind of Boards, like a Court of Guard, that Men may lie down upon them in Eaſe; for when they ſhould be beſt prepared for their Ends, they are moſt tormented, lying only upon the Ground; they had better take them and hang them as ſoon as they have their Sentence.

Jackſon, the Keeper. Seventeen out of Nineteen made their Eſcapes out of that Hole, they having only a Form there.

Turner. I did with theſe poor Souls pray heartily; none were able to pray, poor Creatures! two were dying; I prayed with them, comforted them, aſſiſted them, and gave them five Shillings when I came out of the Hole: Now pray join with me in Prayer.

Sir *Richard Ford*. If I did think there were a Reprieve to come for you, I could be contented to ſpin out the Time thus; but, in good earneſt, I expect none; unleſs you had an Apprehenſion you were not to die, you would not thus run to ſo many Impertinencies, that, methinks, cannot fit you for Death.

Turner. Truly, I expect none; pray join with me in Prayer.

(Then he pray'd ſome Time, and Mr. Weldon, *the Ordinary of* Newgate, *join'd with him in Prayer.)*

Mr. Ordinary. The Lord Jeſus have Mercy upon thee!

Turner. Mr. Sheriffs, God be with ye: Pray remember my Duty and Reſpects to my Lord Mayor, and to all the Aldermen, and to all their Families.

Turner. Executioner, I charge you meddle not with my Cloaths.

Serjeants. Col. *Turner*, we'll take care of them.

Turner. Lord, I am aſſured to be with thee in Glory; I do rely and depend, all in all, upon Chriſt: Refuſe not my Soul at the laſt Hour, I have none in Heaven, nor none in Earth, nor any thing but thee to rely upon; and therefore into thy Hands, both now, and for ever, I commit my Soul, my Body, my Spirit, in ſure and certain Hopes of a joyful Reſurrection at the Day of Judgment, where I muſt appear and give Account for my Sins; but Jeſus Chriſt hath waſhed them away in his Blood. Pray, Doctor, let me beg you to read thoſe Verſes in the ſecond of the *Hebrews*, to comfort me, being the 14, 15, 16, 17, and 18 Verſes. *Foraſmuch then as the Children are Partakers of Fleſh and Blood, he alſo himſelf likewiſe took part of the ſame, that through Death he might deſtroy him that had the Power of Death, that is the Devil; and deliver them who, through fear of Death, were all their Life-time ſubject to Bondage. For verily he took not on him the Nature of Angels, but he took on him the Seed of Abraham; wherefore, in all Things it behoved him to be made like unto his Brethren, that he might be a merciful and faithful High-Prieſt, in Things pertaining to God, to make Reconciliation for the Sins of the People; for in that he himſelf hath ſuffer'd, being tempted, he is able to ſuccour them that are tempted.*

After this, he gave Forty Shillings to a Miniſter, to be given to the Poor of that Pariſh, and Eighteen Shillings and Sixpence more, to be deliver'd to his Wife, to be given to his young Son's School-Maſter.

Turner. Mr. *Jackſon*, God be with you: Remember me to my Landlord, and all there. My two Children, I hope, will be freed. Mr. Sheriff, muſt I hang all Day?

Sir *Richard Ford*. You will be cut down, as ſoon as you are dead.

Turner. Pray tell me true, Mr. Sheriff.

Sir *Richard Ford*. You will not hang above half an Hour.

Thereupon, he directed the Executioner to take off his Halter from his Shoulders; and afterwards taking it in his Hand, kiſſed it, and put it on his Neck himſelf: Then after he had fitted his Cap, and put it on, he went out of the Cart upon the Ladder. The Executioner tied him up, and pulling the Rope a little, ſays *Turner*, What, doſt thou mean to choak me? Pray, Fellow, give me more Rope: What a ſimple Fellow is this! How long have you been Executioner, that you know not yet how to put the Knot?

Mr. *Secker*, Miniſter, out of a Window near. Mr. *Turner*, have you remember'd thoſe four Things I ſpake to you of?

Turner. I have done them.

Mr. *Secker*. I truſt this Hour of Heavineſs will be an Hour of Happineſs.

Turner. I am aſſured of it.

Mr. *Secker*. A living Chriſtian in a dying Hour is the beſt of all. The Lord be with you, and the Lord carry your Soul ſafe thorogh the Jaws of Death, to the Joys of Life!

Turner. I doubt not, but through a dark Cloud I ſhall ſee a bright Saviour. Executioner, look ye, turn me not off, 'till you have the Sign from me, which ſhall be by laying my Right Hand on my Left Shoulder. The Lord God forgive thee, I do.

In the Midſt of ſome private Ejaculations, offering to pull down his Cap, he eſpied a Gentlewoman at a Window nigh, kiſſed his Hand, ſaid, *Your Servant, Miſtreſs.*——His Cap being pull'd down, he lifted up his Hands, and ſaid, *I diſclaim any Deſert of mine own, there is nothing in me; look upon me through Jeſus Chriſt. Lord Jeſus, receive my Soul!* And thereupon giving the Sign, the Executioner turn'd him off. And after ſome ſhort Time he was cut down, and his Body convey'd to a Houſe near, there to reſt for a Space, 'till they provided for him decent Burial.

The Confluence of People from the Gaol to the Place of Execution was very great, beyond the Memory of any upon the like Occaſion.

During his Impriſonment, and to the laſt Breath of Life, his Carriage was very undaunted.

NUMBER X.

The Behaviour and Speech of Mr. JOHN TWYN, *at his Execution*.*

IN the Interval, betwixt the Condemnation and Execution of *John Twyn*, divers Applications were made to him, in order both to his Temporal and Eternal Good; and in particular. Mr. *Weldon*, the Ordinary of *Newgate*, ſpent much Time and Pains upon him, to convince him of that horrid Crime for which he was to ſuffer; particularly preſſing him to a Confeſſion both of his Offence, and of the Author of that treaſonable Piece for which he was to die. His Anſwer was, That it was not his Principle to betray the Author, but it belong'd to others; whereupon Mr. Ordinary demanded of him, What it was that could prevail with him to undertake the Printing of it? He ſaid, He was a poor Man; that he had received Forty Shillings, and the Promiſe of a larger Sum, whereupon he undertook it; but who it was that made him that Promiſe, he would not diſcover.

Mr. Ordinary did likewiſe further urge him to a Confeſſion of the Author, upon a Confidence that ſuch a Diſcovery might ſave his Life: To which he replied, That he neither could do it, nor did believe himſelf obliged to it, if he could; for better (ſays he) one ſuffer, than many. Being preſs'd to receive the Bleſſed Sacrament, he return'd, That he was not free to do it; he was againſt receiving according to the Forms of this Church, and he hoped he might do well enough without it; and in this Temper he continued 'till he came to the Place of Execution, where going up the Ladder, Mr. Sheriff told him, That if he had any Thing to ſay, he ſhould remember the Cautions he had given him.

Twyn. I ſuppoſe this Appearance of People doth expect that I ſhould ſay ſomething as to the Matter I come here for. It is true, I come here condemn'd as a Traitor, for printing a Book, taken to be, and own'd to be, and judged to be, ſcandalous and ſeditious.

Sir *R. Ford*. And treaſonable, put that in too.

Twyn. For my own Part, I can ſay this, I knew it not to be ſo, till I came to the Bar to be tried: I was ſurprized in the doing of it, both in the Beginning, and at laſt, I was clear and free in my own Thoughts, as not to intend any Sedition.

Sir *R. Ford*. I would not willingly interrupt a dying Man; I told you before that you muſt not declare any thing in Juſtification, or Mitigation of ſo foul a Crime; but if you had any thing to ſay that was for the diſburthening of your own Conſcience, or to give any good Admonitions to the People to beware of falling into the like Crime, you ſhould be patiently heard; but I wonder you ſhould go about to juſtify yourſelf in this, when you did confeſs both to my Brother here, and myſelf, after Sentence, that *that* which was paſſed upon you was juſt and deſerved.

Twyn. I do not ſay otherwiſe of it, but that it was juſt; but as to my Ignorance of the Matter of intending or imagining to foment and contrive any ſuch Thing tending to ſuch Ends, but barely for getting a little Money for my Family; I was as clear as the Child unborn of any other Deſign knowingly, of any ſuch Thing, I do look upon it as a Surprizal. Firſt, I was ſurprized in this Matter, by reaſon of that dangerous Sickneſs and Weakneſs I was in when it was brought; I received it with my own Hands, but it was wrapt up in waſte Paper, and ſo I deliver'd it to my Servant, he went on with it; and two or three Days after, it was taken from me by thoſe that came to ſearch my Houſe, who themſelves told me, they came upon Information; ſo that it was a Matter I was ſurprized with when it was brought in, by reaſon of my Sickneſs and Weakneſs, being unable to overlook it: And likewiſe as ſoon as it was brought in, the third Day I was diſcover'd in it, by ſome way of Information; and whether thoſe that were the Senders of it in, might not be the Diſcoverers, I know not. Some Diſcovery was made by the Confeſſion of thoſe that ſearched my Houſe: They came by Information, not by Chance. Then when they had taken me, I did ingenuouſly acknowledge and confeſs who I had it of; and yet for all this, the ſearching after thoſe Perſons concern'd was neglected that whole Day, tho' they were at Home, and eaſy to be taken, I could prove it.

Sir *R. Ford*. Mr. *Twyn*, give me Leave to tell you once more, that I am heartily ſorry you have given me the Occaſion to interrupt you a ſecond Time; all theſe Things you pleaded at the Bar, and ſaid as much as you could; the Wiſdom and Juſtice of the Bench did not think this to be a ſufficient Excuſe of that Treaſon you are found guilty of: I would aſk to what End this Diſcourſe tends? Tell me your End.

Twyn. My End is this, and it pleaſe your Worſhip, to ſhew how ignorant and unacquainted I was with the Nature of the Thing; and how far I was in my Conſcience from intending that Treaſon.

Sir *R. Ford*. You ſay you were ſurprized, and that you knew not the Treaſon; Was it not clearly and plainly (by your own Servant) proved that you compoſed ſome Part of it, and printed it yourſelf, and corrected it? You underſtood *Engliſh*, or elſe you could not correct it; if you underſtood *Engliſh*, or Senſe, you could not be ignorant that it was a hor-

* This Speech ſhould follow his Trial, in Vol. II. p. 534.

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rid Piece of Treaſon, ſuch as no honeſt Man ought to ſee and conceal one half Hour; therefore do not juſtify yourſelf, it ſerves not to any Purpoſe here, or in the World to come: If you are not guilty of the Malice, you have the more eaſy Acceſs to Comfort hereafter; but that will not help you here on Earth: Pray ſpend that little Time you have to ſome better Purpoſe than this; if you have any Thing to ſay that may become a modeſt Man to ſay, we are willing to hear it: If you can remember any Perſon that aſſiſted you in correcting it, or otherwiſe were concerned in it, ſay it.

Twyn. No Perſon aſſiſted me, I corrected it not; it was carried out of my Houſe to correct, and brought in corrected.

Sir *R. Ford.* You ſhall not ſay that you are denied that Chriſtian Liberty a dying Man ought to have; we are not to ſuffer any Reflections on this Buſineſs, you had a fair Trial: I ſay, we would not deprive you of your Liberty of ſpeaking, but do not abuſe that Liberty that is given you, by ſpending your Time impertinently, and fruitleſsly; but if you have any thing further to offer to God, which is more for your Good, go to that.

Twyn. I ſhall forbear to inſiſt any further, as to the Narration of that Matter; I ſhall be very unwilling and tender of reflecting any thing upon the King, or the Government, or give Offence to your Worſhips any way.

Sir *R. Ford.* Nothing but that ſhall offend us.

Twyn. I ſhall go to Prayer.

Sir *R. Ford.* Do, do, we will join with you, and pray for you.

He continued in private Prayer on the Ladder ſome Time.

Sir *R. Ford.* Executioner, do not turn him off, 'till he has given you a Sign.

Mr. Ordinary of *Newgate.* Mr. *Twyn*, give a Sign to the Executioner, when you have done; you muſt not throw yourſelf off, you will be your own Executioner in that.

Twyn. Executioner, when I give you the Sign, by pulling you by the Shoe, then turn me off.

Executioner. I will, I will, the Lord bleſs thy poor Soul.

Afterwards, the Executioner coming down, Mr. *Twyn* told him, the Sign ſhould be by moving his Foot.

Twyn. *O Lord, hear the Prayer of thy poor Servant, receive me into thy Mercy! Lord, in thee I believe, receive my Spirit! Lord Jeſus! let my Prayers be acceptable in thy Sight! O Lord, my Strength, and my Redeemer! O Lord, I beſeech thee, receive me into the Arms of thy Mercy; let me have an Inheritance with thee, to live with thee for ever, and then come, Lord Jeſus! come quickly!*

Then giving the Sign, the Executioner did his Office; and being cut down, his Head was ſevered from his Body, and his Body divided into four Quarters, which are to be diſpoſed of as the King ſhall aſſign; ſince which Time, his Head is placed over *Ludgate*, and his Quarters upon *Alderſgate*, and other Gates of the City.

It will be here convenient to make Two Obſervations upon the Words of the Priſoner.

FIRST, he ſays, That the Proofs were ſent out of his Houſe to be corrected, and brought back again corrected, and ſo not corrected by himſelf; which is not only contrary to what he formerly owned, as was made out by ſeveral Proofs at his Trial, concerning his own correcting of it, but to his ſolemn Declaration at the Bar, avowing, that he knew nothing more of the Buſineſs than what he there delivered: For, ſuppoſing ſuch a Confeſſion, the next Queſtion would infallibly have been, To whom was it carried? or, Who corrected it? as the readieſt way to the Diſcovery of the Author.

Secondly, he ſays, That the Perſons concerned (meaning *Calvert*, and her Maid) were neglected that whole Day, being at Home, and eaſy to be taken, which is diſproved, both by his own Servants, and Mrs. *Calvert*'s: And likewiſe proved, on the other Side, That if he himſelf would have ordered his Apprentice to have look'd after the Maid (as he promiſed, and was directed), ſhe had been ſecured that very Morning; the Fellow meeting her in St. *Bartholomew's Cloſe*, within a Quarter of an Hour after his Maſter was carried away, not knowing that ſhe had any Concern in the Buſineſs. As to the Miſtreſs herſelf, ſhe is, at preſent, under Cuſtody.

NUMBER XI.

The Earl of CLARENDON's *Vindication of Himſelf againſt the Articles of Treaſon exhibited againſt him in Parliament* *.

Mr. Seymour's *SPEECH to the Houſe of Lords.*

My Lords,

" THE Commons aſſembled in Parliament, having received In-
" formation of divers treaſonable Practices and Deſigns of a
" great Peer of this Houſe, *(Edward* Earl of *Clarendon)* com-
" mand me to accuſe the ſaid *Edward* Earl of *Clarendon* of Treaſon,
" and other Crimes and Miſdemeanors; and I do here in their Names,
" and in the Names of the Commons of *England*, accuſe *Edward* Earl
" of *Clarendon* of Treaſon, and other high Crimes and Miſdemeanors. I
" am further commanded by the Houſe of Commons, to deſire your
" Lordſhips, That the Earl of *Clarendon* may forthwith be ſequeſtered
" from Parliament, and be committed to ſafe Cuſtody. They further
" command me to acquaint your Lordſhips, That they will in con-
" venient Time exhibit the Articles of the Charge againſt him.

November 14, 1667. The Vote of the Houſe of Lords.

Reſolved, *&c.*

" *That the Lords have not complied with the Deſire of the Houſe of Com-*
" *mons, concerning the Commitment of the Earl of* Clarendon, *and ſequeſtering*
" *him from Parliament; becauſe the Houſe of Commons have only accuſed him*
" *of Treaſon in general, and have not aſſigned or ſpecified any particular Treaſon.*

ARTICLES *of Treaſon exhibited in Parliament againſt* Edward *Earl of* Clarendon.

I. " THAT the Earl of *Clarendon* hath deſigned a Standing Army to
" be raiſed, and to govern the Kingdom thereby; adviſing the
" King to diſſolve the preſent Parliament; to lay aſide all Thoughts of
" Parliaments for the future; to govern by Military Power, and to
" maintain the ſame by Free Quarter and Contribution.

II. " That he hath, in hearing of many of his Majeſty's Subjects,
" falſely and ſeditiouſly ſaid, the King was in his Heart a Papiſt, Popiſh-
" ly affected, or Words to that Effect.

III. That he hath received great Sums of Money for paſſing the *Canary*
" Patent, and other illegal Patents; and granting ſeveral Injunctions to
" ſtop Proceedings at Law againſt them, and other illegal Patents former-
" ly granted.

IV. " That he hath adviſed and procured divers of his Majeſty's Sub-
" jects to be impriſoned againſt Law, in remote Iſlands, Garriſons, and
" other Places, thereby to prevent them from the Benefit of the Law;
" and to introduce Precedents for Impriſoning of other of his Majeſty's
" Subjects in like Manner.

V. " That he hath corruptly ſold ſeveral Offices, contrary to Law.

VI. " That he hath procured his Majeſty's Cuſtoms to be farmed at
" under Rates, knowing the ſame; and great pretended Debts to be paid
" by his Majeſty, to the Payment whereof his Majeſty was not in Strict-
" neſs bound: And hath received great Sums of Money for procuring the
" ſame.

VII. " That he hath received great Sums of Money from the Com-
" pany of *Vintners*, or ſome of them, or their Agents, for enhancing the
" Prices of Wine, and for freeing them from the Payment of legal Pe-
" nalties which they had incurred.

VIII. " That he hath in a ſhort Time gained to himſelf a far greater
" Eſtate than can be imagined to be lawfully gained in ſo ſhort a Time: And
" contrary to his Oath, hath procured ſeveral Grants under the Great Seal
" from his Majeſty, to himſelf and Relations, of ſeveral of his Majeſty's
" Lands, Hereditaments, and Leaſes, to the Diſ-profit of his Majeſty.

IX. " That he introduced an arbitrary Government in his Majeſty's
" foreign Plantations; and hath cauſed ſuch as complained thereof, be-
" fore his Majeſty and Council, to be long impriſoned for ſo doing.

X. " That he did reject and fruſtrate a Propoſal and Undertaking,
" approved by his Majeſty, for the Preſervation of *Nevis* and *St. Chriſto-*
" *pher's*, and reducing the *French* Plantations to his Majeſty's Obedience,
" after the Commiſſions were drawn for that Purpoſe; which was the
" Occaſion of ſuch great Loſſes and Damages in thoſe Parts.

XI. " That he adviſed and effected the Sale of *Dunkirk* to the *French*
" King, being Part of his Majeſty's Dominions, together with the
" Ammunition, Artillery, and all Sorts of Stores there, and for no
" greater Value than the ſaid Ammunition, Artillery, and Stores were
" worth.

XII. " That the ſaid Earl did unduly cauſe his Majeſty's Letters Pa-
" tents under the Great Seal of *England* (to one Dr. *Crowther*) to be altered,
" and the Inrollment thereof to be unduly razed.

XIII. " That he hath, in an arbitrary Way, examined and drawn
" into Queſtion divers of his Majeſty's Subjects concerning their Lands,
" Tenements, Goods and Chattels, and Properties; determined thereof
" at the Council-Table, and ſtopped Proceedings at Law; and threatened
" ſome that pleaded the Statute of 17 *Car.* I.

XIV. " That he had cauſed *Quo Warranto's* to be iſſued out againſt
" moſt of the Corporations of *England* by Act of Parliament, to the in-
" tent he might receive great Sums of Money from them for renewing
" their Charters; which when they complied withal, he cauſed the ſaid
" *Quo Warranto's* to be diſcharged, and Proſecution thereon to ceaſe.

XV. " That he procured the Bills of Settlement for *Ireland*, and re-
" ceived great Sums of Money for the ſame in a moſt corrupt and unlaw-
" ful Manner.

XVI. " That he hath deluded his Majeſty and the Nation, in all
" foreign Treaties and Negotiations relating to the late War.

XVII. " That he was a principal Author of that fatal Counſel of di-
" viding the Fleet, about *June* 1666."

† THE firſt Charge, then, that is printed againſt me, is, *That the Earl of* Clarendon *hath deſigned a ſtanding Army to be raiſed, and to govern*

* This Vindication ſhould be read after the Proceedings againſt the Earl of *Clarendon*, in Vol. II. p. 580.

Montpelier, July 24, 1668.

† As nothing could be more ſurpriſing to me, nor I think to any Man elſe, than to find myſelf, after near Thirty Years Service of the Crown in the higheſt Truſt; after having paſſed all the Time of his Majeſty's Exile with him beyond the Seas, and in his Service, and in which the indefatigable Pains I took was notorious to many Nations; and after I had the Honour and Happineſs to return again with his Majeſty into *England*, and to receive from him ſo many eminent Marks of his Favour, and to ſerve him near Eight Years after his Return, in the Place of the greateſt Truſt, without ever having diſcovered that his Majeſty was offended with me, or, in Truth, that he had ever the leaſt ill Succeſs from any Counſel I had ever given him; or that any Perſon of Honour and Reputation, or Intereſt in the Nation, had ever made the leaſt Complaint againſt me, or had any Thought that the Miſcarriages (for Miſcarriages were enough ſpoken of) had proceeded from me, or any Advice of mine: I ſay, as after all this I could not but be exceedingly ſurpriſed, to find myſelf on a ſudden, when I had not the leaſt Imagination of it, bereft of the King's Favour; and fallen ſo far from his Kindneſs, even within three or four Days after his Majeſty had vouchſafed to condole with me in my Houſe for the Death of my Wife, that he reſolved to take the Great Seal from me: So it was no ſmall Comfort to me, to ſee and know, that very few Men of Honour or Reputation approved or

vern the Kingdom thereby; adviſed the King to diſſolve the preſent Parliament; to lay aſide all Thoughts of Parliaments for the future; to govern by Military Power, and to maintain the ſame by free Quarter and Contribution.

It is no great Vanity to believe, that there is not one Perſon in *England*, of any Quality, to whom I am in any Degree known, who believes me guilty of this Charge; and I want not a Cloud of Witneſſes, (beſides the Teſtimony that I hope his Majeſty himſelf will vouchſafe to give me in this Particular) who from all they have heard me ſay in Council, and in Converſation, can vindicate me from this odious Opinion. Having had the Honour, by the ſpecial Command of his late Majeſty of bleſſed Memory to attend the Prince, his now Majeſty, into the Parts beyond the Seas, and to be always with him and in his Service theſe many Years of his Exile, and till his happy Return; I always endeavoured to imprint in his Majeſty's Mind an Affection, Eſteem and Reverence for the Laws of the Land; without the trampling of which under Foot himſelf could not have been oppreſſed; and by the Vindication and Support of them, he could only hope and expect Honour and Security to the Crown. Upon this Foundation and declared Judgment, I came into the Service of his Father, by oppoſing all illegal and irregular Proceedings in Parliament; and I never ſwerved from that Rule in my Advice and Counſel to him or his Son. From the Time of his Majeſty's happy Return from beyond the Seas, I took nothing ſo much at Heart as the Eſtabliſhment of the due Adminiſtration of Juſtice throughout the Kingdom, according to the known Laws of the Land, as the beſt Expedient I could think of for the compoſing the general Diſtempers of the Nation, and uniting the Hearts of the People in a true Obedience to, and Reverence for his Majeſty's Perſon and Government. And with what Succeſs I ſerved his Majeſty in this Province, (which he was pleaſed principally to commit to my Care and Truſt) I muſt appeal to the whole Nation; and whether the oldeſt Man can remember, that in the beſt Times Juſtice was ever more equally adminiſtered, and with leſs Complaint and Murmur; which hath been frequently acknowledged from all the Parts of the Kingdom, and been often taken Notice of by the King himſelf with great Approbation, and confeſſed by moſt of the Nobility upon ſeveral Occaſions. I have often declared in Parliament the King's Affection and Reverence for the Laws, and his Reſolution neither to ſwerve from them himſelf, nor to ſuffer any body elſe to do ſo: And upon the publick Occaſions of ſwearing the Judges in any Courts, I always enjoined them to be very ſtrict and preciſe in the Adminiſtration of Juſtice according to Law, with all Equality, and without Reſpect of Perſons, which the King expected from them; and that as he reſolved never to interpoſe by Meſſage or Letter for the Advancement or Favour of any Man's Right or Title, ſo he would take it very ill if any Subject (how great ſoever) ſhould be able to pervert them: And I do believe, there have never paſſed ſo many Years together in any Age, in which the Crown hath not in the leaſt Degree interpoſed in any Cauſe or Title depending in *Weſtminſter-Hall*, to incline the Court to this or that Side; or in which the Crown itſelf hath had ſo many Cauſes judged againſt it in ſeveral Courts; at leaſt in which former Practice and Uſage on the Behalf of the Crown hath been leſs followed: And nothing is more known, than that from the Time of the King's bleſſed Return into *England*, even to the Preparation of this Charge againſt me, I was reproached with nothing ſo much as too much adhering to the Law, and ſubjecting all Perſons to it; and this Reproach hath not been caſt upon me by any ſo bitterly and maliciouſly, and in Places where they thought it might produce moſt Prejudice to me, as by thoſe who now contrived this Charge, and who have always been great Enemies to the Law.

All this, and much more of this kind, is manifeſt to all the World; and therefore I need not labour more in this Vindication. Yet I cannot but obſerve, that there is not in all the King's Forces, nor was not when his Forces were then much greater, one Officer recommended by me; and moſt of them ſuch who profeſſed publickly a great Animoſity againſt me; having been, by the Malice of ſome Men, very unreaſonably perſuaded that I was their Enemy; that I deſired that they might be diſbanded; at leaſt ſo obliged to the Rules of Law, that they ſhould be every Day caſt into Priſon; and they had indeed found that in ſome Inſolencies they had committed againſt the Law, and ſome Pretences they had made to Privileges againſt Arreſts, and the like, that I had always oppoſed their Deſires. So that it is not probable that I ſhould contribute my Advice for the raiſing a Standing Army, and that the Kingdom ſhould be governed thereby, when there were very few Men ſo like to be deſtroyed by that Army as myſelf.

There is another Part of this Article, how improbable and impoſſible ſoever, which in many Reſpects will require a more ample Diſcourſe and Defence: That I adviſed the King to diſſolve the preſent Parliament; to lay aſide all Thoughts of Parliaments for the future; to govern by Military Power, and to maintain the ſame by free Quarter and Contribution. Which Particulars, ſo compounded and put together, and ſolemnly undertaken to be proved, even by two Privy-Councillors, who pretended to be preſent at the Debate, was in Truth the Foundation of the great Prejudice that was raiſed againſt me; and which, though known to be falſe to the Perſons who diſperſed it, and appeared very impoſſible to all Men who had but an indifferent good Opinion of my Integrity or Diſcretion; yet the Manner of the Inſinuation, and the Circumſtances with which it was related, and the private Intimation from ſome Privy-Councillors that they would prove it, got ſo much Credit in the Houſe of Commons, that they thought fit to make it a Part of my Charge; and therefore it will be neceſſary to ſet out a clear Narrative of that whole Debate, upon ſome Particulars whereof thoſe Informers againſt their Oath, and againſt all kind of Ingenuity, have grounded their Inſinuation, and direct (though hitherto ſecret) Information: All the Particulars whereof are ſo well known to ſeveral Perſons of Honour who were preſent, that I could never have doubted, if the Matter had ever been brought to a public Examination, I ſhould have received an ample Vindication; and, in Truth, that the Informers themſelves, how confidently ſoever they had undertaken it, would never have juſtified their Accuſation.

At the laſt Receſs of the Parliament it had been prorogued to the tenth of *October* following, I being at that time indiſpoſed with the Gout, and ſo not able to be preſent. About the Beginning of *June* (the Treaty being then begun at *Breda*), the *Dutch* Fleet, under the Command of *De Ruttet*, came upon our Coaſt, and ſeemed to be bound for the River of *Thames*, which cauſed a general Terror in *Kent*; upon which, Lieutenant-General *Middleton* was ſuddenly ſent down thither to draw the Train-bands together, in order to which he convened them to *Rocheſter*: The Fortifications at *Sheerneſs* (which the King believed to have been made defenſible, having himſelf made a Journey thither in the Winter, and charged the Commiſſioners for the Ordnance for the Proſecution of it, who no doubt failed much in the Execution of his Commands) were found ſo weak, and ſo utterly untenable, that, upon the Approach of the *Dutch* Fleet, the Soldiers who were in it (who were very good experienced Men, and under excellent Officers) were by their Cannon forced to quit it, and the *Dutch* preſently landed upon it, and ſeemed to have a Reſolution of fortifying it: Upon the News whereof, and of the general Diſtraction in that Country, the Duke of *Albemarle* was ſent down to *Chatham* with ſuch Troops of Horſe and Foot as could ſpeedily be drawn together of the Regiments of Guards, and ſuch of the Train-bands of the neighbour Countries as could be perſuaded to march. Upon the General's Arrival at *Chatham*, he writ very chearful and confident Letters, that he had no Fear of the *Dutch*, if they ſhould make any Attempt, which he was confident they durſt not do; and that he had put a Chain over the River, which would ſtop their Ships from coming up: However, the next Day, being the twelfth of *June*, the *Dutch* Fleet advanced, having without the leaſt Difficulty broken the Chain, and ſhortly after taken and burned two or three of the greateſt Ships of the Royal Navy (which had been very negligently left there, and might well have been brought into Security), and ſix or ſeven Merchant-Ships, whereof ſome were Outward-bound with Merchandiſe; all Things being in ſo great Diſtraction at *Chatham*, and thereabouts, that nothing was done that was naturally to be expected from an experienced Commander, who had excellent Officers with him, ready to obey his Orders.

The Noiſe of this quickly filled the City of *London*; and yet the Confuſion there was not ſo great as in the Court itſelf, where they who had moſt advanced the War, and reproached thoſe who were againſt it, as Men who were not ſolicitous for the Honour of the Nation, and who never ſpoke of the *Dutch* but with Contempt, and that they ſhould be cudgelled, were the moſt dejected Men that can be imagined, ſpeaking very bitterly againſt thoſe who had advanced the War: And truly, the Diſtraction was ſo great in Court and City, as if an Army of a hundred thouſand Men had encompaſſed it; and though the *Dutch* Fleet returned out of the *Thames*, and advanced no farther than *Chatham*, yet it remained ſtill upon the Coaſt, and landed about *Harwich*, and attempted the Caſtle of *Langhorne-Point*, and kept the Counties of *Eſſex*, *Norfolk*, and *Suffolk*, in perpetual Alarm for many Days: The Train-bands which had been drawn together, pretended that the Time was expired that they were obliged to maintain themſelves; and therefore required Pay, or Liberty to depart, though the Enemy was in View, and themſelves like to be made the firſt Prey. The Regiments which had been raiſed without Charge to the King, upon the Intereſt of ſeveral Perſons of Honour and great Reputation, had upon the firſt Muſters received one Month's Pay; but that Time was expired; and they muſt either receive another Pay, or take free Quarter upon the Country, which the Time would not bear. In this Perplexity, ſome Perſons had adviſed the King to ſummon the Parliament to convene upon a ſhort Day, notwithſtanding it ſtood prorogued till *October*. And when his Majeſty aſked my Opinion of it, I told him I thought it could not be done; I was ſure it never had been done. To which his Majeſty replied, That he was aſſured by many that he might do it, and named Mr. *Prynn* to be of that Opinion. Shortly after his Majeſty appointed the whole Council to meet upon the Debate, of which I knew nothing till I came into the Room: The King himſelf told us what we were to debate upon; that we all ſaw

liked what was done; but that the ſame was contrived, purſued, and brought to paſs by Men and Women of no Credit in the Nation; by Men, who had never ſerved his Majeſty or his bleſſed Father eminently or uſefully, but moſt of them of Truſt and Credit under *Cromwell*, or never of Credit to do him the leaſt Service; and who were only angry with me, for not being pleaſed with their vicious and debauched Lives, or for oppoſing or diſſuading their looſe and unreaſonable Counſels, which they were every Day audaciouſly adminiſtring in Matters of the higheſt Moment, with great Licence and Preſumption. But, above all, it was of the higheſt Conſolation to me, when it was publickly and induſtriouſly declared, that the King was firmly reſolved to deſtroy me, and would take it very well from all Men who would contribute thereunto, by bringing in any Charge or Accuſation againſt me; when the moſt notorious Enemies I had, were the only Perſons truſted in Employment; Men who had moſt eminently diſſerved and maliciouſly traduced the King, and been to that Time looked upon as ſuch by his Majeſty; and all who were believed to have Kindneſs for me, were diſcountenanced; when Men of all Conditions and Degrees were daily ſollicited and importuned, by Promiſes and Threats, to declare themſelves againſt me, at leaſt if they would not be wrought over to do any Thing againſt their Conſciences, that they abſent themſelves from thoſe Debates; that all this Malice and Conſpiracy, with ſo long Deliberation and Conſultation, ſhould not be able at beſt to produce and exhibit any other Charge and Accuſation againſt me, but ſuch a one, as moſt Men who knew me, or had any Truſt and Employment in the Publick Affairs, were well able to vindicate me from the Guilt of, and even my Enemies themſelves did not believe: The Particulars whereof (as far as I can take Notice of them, they having not to this Day been reduced into any Form, ſo much as in the *Houſe of Commons* itſelf) I ſhall now examine; and if I ſhall appear too tedious in the Examination and Diſquiſition of them, and to ſay more than is neceſſary for my own Defence, and to mention many particular Perſons in another Manner than is uſual upon Occaſions of this Kind; I deſire it may be remembered and conſidered, that this is not written as a formal Anſwer to an Impeachment, nor like to be publiſhed in my Life-time; a Judgment of Baniſhment being paſſed againſt me (without the leaſt Proof made, or offered, for the making good any one Article of Treaſon or Miſdemeanour) by Act of Parliament; but is a Debt due to my Children and Poſterity, that they may know (how much ſoever they are or may be involved in the Effects of the ſharp Malice againſt me) how far I am from any Guilt of thoſe odious Crimes which have been ſo odiouſly laid to my Charge. And this being my End, I may be excuſed if I ſo far enlarge upon all Particulars, that it may be manifeſt unto them how far I have been from treading in thoſe Paths, or having been acceſſary to thoſe Counſels, which have been the Source from which any of thoſe bitter Waters have flowed, which have corrupted the Taſte, even almoſt of the whole Nation. And in order to this ſo neceſſary Diſcourſe and Vindication of my Integrity and Honour, I can only take Notice of the printed Paper of my Charge, all other Correſpondence and Communication being ſo ſtrictly inhibited to all kind of Men to hold any Commerce with me, except my Children and menial Servants, who only have Liberty to write to me of my own Domeſtick Affairs, and the Letters they write and receive being to be firſt communicated to one of the Secretaries of State. *Earl of* Clarendon's *Letter*.

the Straits we were in, the general Diſtemper of the Nation, the Inſolence of the Enemy; that there was a Neceſſity of having an Army; that he had no Money, nor knew where to get any, nor could imagine any other Way to provide againſt the Inconveniencies which were in View, than by calling the Parliament; of which and any other Expedient he would receive our Advice; expreſſing ſo much of his own Senſe, that it was plain enough that he inclined to that Remedy: Upon which three or four of thoſe who ſat at the lower End of the Table, and who were known to have contrived the Counſel, expreſſed themſelves at large; ſeemed very confident that it might lawfully be done; that no other Way could be found to raiſe Money; that Men could not be kept together without Money; and deſired that they who were of another Opinion would propoſe ſome other Counſel. I do not deny, their Reaſons did in no degree ſatisfy me; and though I knew very well that the Reſolution was upon the Matter already taken, that there was a great Deſire in ſome Men (whoſe Malice to me was enough known) to lead me into ſome Expreſſions of which they might take Advantage; yet the Obligation of my Oath to deliver myſelf freely, the conceived Security of that Place, and the Opinion that the Thing propoſed was not reaſonable, and would produce many Inconveniencies to the King's Service, prevailed with me to diſcharge my own Conſcience, God knows, according to the beſt of my Underſtanding: I ſaid, I knew well the Diſadvantage upon which I ſpoke in ſo tender a Point, and too impopular a Thing it was to be againſt the convening of the Parliament in a Time of ſo great Straits, when no other Remedy could be found; yet that appearing to me not practicable, I thought, it ought not to be embraced: That it was confeſſed by all hands, that in the Point of Law, the convening them before the Time to which they were adjourned, was at leaſt very doubtful; and to me, upon all the Diſquiſition I could make, it was very clear that it could not be done; that the Temper of both Houſes was well known; and it could not but be preſumed, that when they came together, the firſt Debate they would fall upon would be of the Manner of their coming, and whether they were in a Capacity to act; and I doubted very much, that there would be very few who would be willing to paſs an Act of Parliament in ſo doubtful a Seaſon; and then if their Meeting was only to confer, when they might ſay any thing, and conclude nothing, I thought it well worth the conſidering, whether in ſo general a Diſtemper, ſuch an Aſſembly might not interrupt all other Conſultations and Expedients, and yet propoſe none, and ſo encreaſe the Confuſion: I ſaid, If the Neceſſities were ſo urgent, that it was neceſſary to have a Parliament convened, and that they could not lawfully re-aſſemble that which was prorogued till the Day to which it was prorogued, as I was confident it could not be, there could be no Doubt but that it was in the King's Power to diſſolve that Parliament, and forthwith iſſue out Writs for the calling another Parliament, which might regularly be aſſembled more than a Month before the prorogued Parliament could meet. And there were many more of the Council of the ſame Mind, that it would be beſt to diſſolve the Parliament, and to call another. Many declared themſelves againſt this Expedient; profeſſing, that though there had at ſome Times appeared many ill Humours and Miſapprehenſions in the Houſe of Commons, yet that they were very right in the main, for the King's Service; and that there is no Hope ever to ſee another Houſe ſo well conſtituted for Church and State; and the King himſelf ſeemed to have the ſame Opinion, and no Inclination to diſſolve it; and ſo reſumed the former Debate, What was to be done for the preſent to raiſe Money, or to maintain his Army, if he ſhould not call the Parliament to meet before the Day? The old Argument, That there could be no other Way to be found out, was urged; and calling with more than uſual Earneſtneſs in that Place, that they who were of another Opinion would propoſe their Expedient, the King himſelf, with ſome Quickneſs, aſked me What I would adviſe? To which I replied, That if in Truth that which was propoſed was in the Nature of it not practicable, and being practiſed could not attain the Effect, it ought to be laid aſide, though another could not for the preſent be propoſed; that I thought it clear, that the Parliament could not be aſſembled in leſs than twenty Days; and that if they were met, and believed themſelves lawfully qualified to grant a Supply of Money, we all know the Formality of that Tranſaction would require ſo much Time, that Money could not be raiſed ſoon enough thereby to raiſe an Army, or maintain that Part of it which was raiſed to prevent the landing of an Enemy which was already upon the Coaſt, and (as many thought) ready every Day to make their Deſcent; and yet the ſending out a Proclamation for re-aſſembling the Parliament, would inevitably put an End to all our Councils; that, for my part, I believed the *Dutch* had ſatisfied themſelves with the Affront they had given us, and had no Thought of proceeding farther; that they could not have Men enough on board to make any Deſcent, without our having Notice of it; and that the King had all poſſible Security from the King of *France*, that he had no ſuch Intention, and then it would not be in the Power of the *Dutch*, with their own Strength, to give us any Trouble: However, for the preſent Support of thoſe Troops which were to guard the Coaſts, ſince Money could not be found for their preſent conſtant Pay, without which free Quarter could not be avoided, the only Way that appeared to be practicable, and to avoid the laſt Evil, would be to write Letters to the Lieutenants and Deputy-Lieutenants of thoſe Counties where the Troops were obliged to remain, that they would cauſe Proviſions of all Kinds to be brought into their Quarters, that ſo the Soldiers might not be compelled to ſtraggle to provide for their own Victuals, which would end in the worſt kind of free Quarter; and that the like Letters might be written to the neighbour Counties, wherein no Soldiers were quartered, to raiſe Money by way of Contribution, as had heretofore been done, that ſo the Troops might be enabled to ſtay, and continue in the Poſture they were in, for Defence of the Kingdom, in which thoſe other Counties had their Share of the Benefit, and without which they muſt themſelves be expoſed to the Diſorder of our own Soldiers, or to the Invaſion of the Enemy upon their Retreat, or to both: And it is poſſible, that in the Earneſtneſs of this Debate, and the frequent Interruptions which were given, I might uſe that Expreſſion of raiſing Contribution, as had been done in the late Civil War; but how, from ſuch a Debate, in ſuch a Place, and with ſuch Circumſtances, every Particular whereof will be juſtified by many Lords of the Council, who were then preſent, can naturally be formed any Concluſion, or in truth any reaſonable Imagination, that I have deſigned a Standing Army to govern the Kingdom by, adviſed the King to diſſolve the preſent Parliament, to lay aſide all Thoughts of Parliaments for the future, to govern by military Power, and to maintain the ſame by free Quarter and Contribution, I muſt and am very willing to refer and ſubmit to the impartial Judgment of the Parliament, and of all diſcerning Men.

The ſecond Article is, *That I have, in the Hearing of many of his Majeſty's Subjects, falſly and ſeditiouſly ſaid,* The King was in his Heart a Papiſt, Popiſhly affected, *or Words to that Effect.*

I have Occaſion too often, throughout this whole Charge, to acknowledge and magnify the great Goodneſs of God Almighty, that ſince he thought not fit (for my greater Humiliation, and it may be to correct the Pride of a good Conſcience) to preſerve me entirely from thoſe Aſperſions of Infamy, and thoſe *Flagella Linguæ*, thoſe Strokes of the Tongue, which always leave ſome Mark or Scar in the Reputation they deſire to wound, that he hath yet infuſed into the Hearts of my Enemies, who ſuggeſted and contrived this Proſecution againſt me, to lay ſuch Crimes to my Charge, as my Nature is known moſt to abhor, and which cannot only not be believed, but muſt be contradicted, and a Vindication of me from that Guilt muſt be made, by all Men who know me to any degree, or have been much in my Company; and as Juſtice would have required it, ſo the uſual Form in Caſes of this kind doth exact, that in ſo general a Charge they ſhould have named one ſingle Perſon of thoſe many in whoſe Hearing I have laid that odious Imputation upon the King; and every Man will preſume, that one ſuch Perſon would have been named, if he could have been found. There is no Man now alive, who hath had the Honour to be ſo many Years about or near the Perſon of the King, as I have been; no Man who knows more the Temptations he hath undergone, and the Aſſaults he hath ſuſtained in the Matter of his Religion, during the whole Time of his Exile, when almoſt a total Deſpair poſſeſſed the Spirits of moſt Men of his own Religion, that he would ever recover his Regality; and the Hopes, and Promiſes, and Aſſurances, were ſo pregnant, of very many of all Conditions, that he ſhould ſuddenly recover if he would change it: No Man knows ſo well, with what Chriſtian Courage he repelled thoſe Aſſaults, or with what pious Contempt and Indignation he reſiſted and rejected thoſe Temptations; nor hath any Man (I think) held more Diſcourſes with his Majeſty concerning Religion, and ſooner and more clearly diſcerned the Reproaches he would undergo, from that innate Candour in his princely Nature, which diſpoſed him to receive any Addreſſes, or hear any Diſcouſes, which thoſe of ſeveral Factions in Religion, with great Preſumption, have uſed to preſent to him; whilſt his Majeſty hath, with equal Temper, and ſingular Benignity, heard all; and pitying their Errors, diſmiſſed them with Evidence, that their Arguments were too weak to make Impreſſion in his Judgment; which though they knew well, yet either Party, out of the Vanity of their Hearts, uſed all the Endeavours they could to get it believed that the King was propitious to them and their Party; and the Papiſts, being moſt preſumptuous in particular, and in their dark Walks in their ſeveral Counties making it a ſpecial Argument to their Proſelytes, and thoſe they endeavoured to make ſo, that the King favoured them, and was of their Religion in his Heart; of which and the great Prejudice it brought to his Majeſty, I frequently received Advertiſements from many Perſons of Honour, and of warm Affections to the Government; of which I always informed the King, who was exceedingly offended at their Folly and Preſumption, and wiſhed that ſome of them might be apprehended, and proſecuted with the utmoſt Rigour, and that ſome ſuch Proſecution might be made againſt all the *Roman* Catholicks, that they might all be convicted; which I always gave in Charge to the Judges accordingly; and upon that and the like Occaſions had a juſt and neceſſary Opportunity to enlarge in the Preſence of many Perſons of Honour and Intereſt in the Kingdom upon the Sincerity of the King's Religion, and his conſtant Exerciſe of it when he ſuffered by it; giving ſuch Inſtances of many Particulars as were pertinent to the Diſcourſe. Of which Endeavours of mine, and of ſome Fruit thereof, I doubt not but that many of as conſiderable Perſons as are in *England* will be ready to give me their Teſtimony: And I may without Vanity ſay, that I had more than a common Part in the framing and promoting that Act of Parliament, that hath made thoſe ſeditious Diſcourſes, of the King's being a Papiſt in his Heart, or popiſhly affected, ſo very penal as it is; and therefore there is need of an undoubted and uncontroulable Evidence, that I did ſo ſoon run into that Crime myſelf; which is all I ſhall for the preſent ſay upon the ſecond Article.

The third Article is, *That I have received great Sums of Money for paſſing the* Canary *Patent, and other illegal Patents; and granted ſeveral Injunctions to ſtop Proceedings at Law againſt them, and other illegal Patents formerly granted.*

I did preſume in my humble Addreſs to the Houſe of Peers to aſſure their Lordſhips, that I never received one Penny over and above the juſt Perquiſites of my Office, according to the Precedent and Practice of the beſt Times, which I conceived to be thoſe of my Lord *Coventry* and my Lord *Elmeſmore*, and which I had made my Rule in all that I had received, except only what I had from the immediate Bounty of the King. And as I did always all that was in my Power to prevent and ſtop all illegal Patents; ſo I believe there are more found in the Office ſtopped by me than by any of my Predeceſſors in ſo long Time: But ſince the *Canary* Patent hath made ſo much Diſcourſe to my Reproach, I ſhall enlarge upon it, and ſet down very punctually all the Proceedings I know in that Affair: By which both the Reaſonableneſs and Juſtice of that Grant will appear, and my Innocence and Unconcerment in it.

About the first *Chriſtmas* after the King's Return into *England*, the Lord-Treaſurer, the Lord Privy-Seal, myſelf, and the two Chief-Juſtices, (being the Perſons appointed by the Statute for that Service) met together to ſet the ſeveral Prices upon the ſeveral Wines; and were attended, according to Cuſtom, by the Company of Vintners, and the chief Merchants in the City who traded in that Merchandize; and being firſt to limit the Merchants to a reaſonable Rate, before we could ſet any Price to the Vintner upon the Retale, we found, by the beſt Enquiry we could make, that the firſt Prices beyond the Seas which the Merchants paid for their Wine were ſo exceſſive, that the Retale could not be brought within any Compaſs; and that ſince the Beginning of the Troubles the Price of Wine in general was exceedingly increaſed, and particularly that of the *Canaries* was almoſt double to what it had been in the Year 1640. I knew very well, by the Correſpondence I had held in the *Canaries*, (during the Time I had ſerved his Majeſty as his Ambaſſador in *Spain*) that the whole Trade of *Canary* Wines was driven ſolely by the *Engliſh*, and the Commodity entirely vented in the King's Dominions, all *Chriſtendom* beſide not ſpending five Pipes of *Canary* Wine; and therefore I aſked the Merchants, what would be the Way to remedy that Miſchief, and whether what I had reported was not true? They confeſſed it to be very true, and that it was a Reproach to our Nation to be ſo much impoſed upon in a Trade that we might govern ourſelves; and that the unreaſonable Prices of the Wine was not the greateſt Prejudice that was befallen that Trade: That before the Troubles they had been ſo far from employing any Stock of Money, that they ſent their Ships fully laden with all Commodities thither, which yielded very good Markets, being ſent from thence to the *Weſt-Indies* in their Plate Fleets; that the very Pipe-Staves they carried did very near diſcharge the Value of the Wine, ſo that they brought home the Proceed of their other Commodities, either in Pieces of Eight, or ſuch other Merchandize as had been brought thither from the *Indies*, and upon which they received great Profit: That, on the contrary, the Trade is now wholly driven by ready Money; that the Commodities they ſend thither will not be taken off, except at their own Prices; ſo that they have for the late Years ſent their Veſſels empty thither, except only with ſome few Pipe-Staves, which, by the Deſtruction in *Ireland*, they cannot ſend in any great Proportion from hence; and their Ships return from thence with no other Lading but thoſe Wines, which they pay for in ready Money, either with Pieces of Eight ſent in their Ships from thence, or by Bills of Exchange charged upon ſome known Merchants in *Spain*; that over and above this, they had of late ſet new Duties upon the Wine, and laid other Impoſitions upon the Merchants, than the *Engliſh* Nation hath been ever accuſtomed to: They ſaid, That all this proceeded from the immoderate Appetite we have for that Sort of Wine, and therefore we take from them as much as they can make; and from our own Diſorder and Irregularity in buying them, in contending who ſhall get the moſt; and ſo raiſing the Prices one upon another, and making the *Spaniards* themſelves Judges what we ſhall pay. My Lords, upon Conſultation amongſt themſelves, found the Matter too hard for them, and that the Reformation of ſo much Evil muſt be done by Degrees; and upon a Repreſentation of all the Difficulties to his Majeſty and his Privy-Council, whoſe Wiſdom could only provide a Remedy proportionable to the Miſchiefs; for the preſent, as they were reſolved not to raiſe the preſent Prices at which the Wine was bought and ſold (which they believed, how reaſonable ſoever, would be very unpopular), ſo they thought it very unjuſt to draw down or abate thoſe Prices, ſince it appeared to them that the Wines coſt more in Proportion upon the Places of their Growth: They declared, therefore, to the Merchants and the Vintners, that though for the preſent they would permit the ſame Prices to continue for the next Year, which they had been ſold for the preſent Year, and which indeed were confirmed by the Act of Parliament, they ſhould hereafter take Care what Markets they made; for that they were reſolved the next Year to make the Prices much lower, both to the Merchant and the Vintner: And upon the Report made of the whole Matter to the King in Council, a Proclamation was publiſhed accordingly.

The next Year both the Merchants and Vintners were very earneſt Suitors, that greater Prices might be allowed; or, at leaſt, that the ſame might be continued; making it very evident that their Wines coſt them more than they had done the Year before. Upon the Debate the *Canary* Merchants were much divided; ſome of them inſiſting very importunately to have the Prices raiſed, becauſe it was notorious that they had paid much more, by Reaſon, as they ſaid, that the Vintage had not yielded near the Proportion that it uſed to do; others, though confeſſing the Encreaſe of Price, yet pretending a more publick Spirit, and the Neceſſity of a Reformation, preſſed earneſtly that the Price might not be raiſed, but that they might be permitted to take what they had done already for this Year. It was quickly perceived whence this Moderation proceeded, and that the laſt Propoſers had a great Quantity of Wine upon their Hands, which had been provided the Year before, and ſo might well be ſold at thoſe Prices; but that the former had no old left upon their Hands, but were ſupplied with a full Proviſion of new, which had coſt them ſo much dearer. Both the one and the other deſired us, that whatever Reſolution we took for the preſent, a Clauſe might be inſerted in the Proclamation, that the next Year after *Canary* Wine ſhould not be ſold for above twenty-four Pounds the Pipe, and that every Year after it ſhould be drawn lower, as it might well be, it having been ſold in the Year 1640 for twenty Pounds; though his Majeſty found it at his Return permitted to be ſold at Six-and-thirty: Such a Clauſe, they ſaid, would give Notice to the Iſlanders, and oblige them to ſell their Wine at more reaſonable Rates, and render the Merchants unexcuſable, if they ſhould give greater. My Lords, notwithſtanding all the Allegations, thought fit to bring the Prices of all Wines lower, which they did, as the moſt effectual Warning for the future; but by his Majeſty's Approbation, that Clauſe was inſerted in the Proclamation as they deſired.

The Year following, when the Lords met again according to Cuſtom (which is, as hath been ſaid, about *Chriſtmas*), they found not the leaſt Reformation; on the contrary, that the *Canary* Merchants had paid dearer than ever, which made them all more ſolicitous to have the Price raiſed, and the Vintners as importunate for their Retale. And indeed the Vintners were in a much worſe Condition than the Merchants, they making it appear that they paid the Merchants much dearer, without which they could get no Wine, and ſo muſt give over their Houſe-keeping; that the Penalty upon the Merchant was very ſmall, being not above Forty Shillings a Pipe, and the Crime not eaſy to be diſcovered, as was manifeſt by there being not one Merchant queſtioned in many Years for that Tranſgreſſion; whereas, on the contrary, the Penalty upon the Vintners was very ſevere, and ſo eaſily diſcovered by any Man who went to a Tavern, and would be an Informer, that moſt of the Vintners in *London* were then ſued in the *Exchequer* upon thoſe Penalties, which, if exacted, muſt produce their preſent Ruin. The Merchants excuſe themſelves for their preſent Pretence, and for their having given more than was lawful for them to have done, by their own Deſire, that they had done their beſt, and that the greateſt Traders amongſt them had conſented not to ſuffer the Prices to be raiſed upon them, but that they found it ineffectual; and that though they ſhould give over their Trades, it would produce no Reformation; that the Trade was open to all Adventurers, and that there had been many Ships ſent from *England* that very Year by *Jews* and other Tradeſmen, who had never before traded to the *Canaries*; inſomuch as when they who had been long bred up to the Trade, and had been long Factors in thoſe Iſlands, ſent their Ships thither, they found other *Engliſh* Ships there, and the Wines bought at a greater Price than they had allowed their Factors to give; ſo that they muſt either have their Ships return empty and unladen, or take the Wines at the Prices other Men gave; that they had choſen the latter, as well to continue the Trade, as to draw home ſome Part of the Stock they had in that Country; that they could imagine but two Ways to reform that Exceſs; the one, by putting the Trade in ſuch a Method, and under ſuch Laws, as might reſtrain that Licence, and not leave it in the Power of Perſons who never had been in the Trade to give Law to it; and by this Means the Iſlanders would find it neceſſary to ſet reaſonable Prices upon their Commodities, and to yield ſuch other Advantages and Privileges to the Merchants as they had heretofore enjoyed; the other, that the King would, by his Proclamation, prohibit the Importation of any *Canary* Wines into his Dominions; and hereby he would quickly receive ſuch Propoſitions from *Spain*, as would put it into his own Power to make the Reformation; otherwiſe the Iſlanders were perſuaded that *England* could not live without their Wines. The Lords were reſolved, notwithſtanding all that had been ſaid, that they would execute the former Proclamation, and reduce the Prices of Wines to what had been then determined; and after they had given a full Account of the whole Buſineſs unto the King in Council, the Reſolution was approved, and a Proclamation iſſued out accordingly. The Merchants and Vintners applied themſelves to his Majeſty, and to many of my Lords of the Council, and thought they had Encouragement enough from thence to hope for Relief, in an Appeal by Petition to the King and Council; and they had thereupon a Day given them to be heard: many of my Lords thought it very hard, if not unjuſt, to compel men to ſell cheaper than they bought, which was the Truth of the Caſe, and which muſt oblige both Merchants and Vintners to ſophiſticate and corrupt their Wines to preſerve their Eſtates, which might probably turn to the great Damage of the whole Kingdom, in producing Sickneſs and Diſeaſes; and this generous and charitable Conſideration prevailed with the major Part of the Lords to be well contented, and to wiſh that ſome Indulgence might be exerciſed towards them. On the contrary, when the King had well weighed the whole Proceedings, and with Trouble and Indignation conſidered the obſtinate Vice of the Nation, which would make us ridiculous to all the World, he expreſſed a poſitive Reſolution to vindicate himſelf and his Government from this Reproach. He thought the adhering firmly to the Prices which had been reſolved upon would be the beſt Preface to this Reformation, though it might bring particular Damage to particular Perſons, who had yet leſs Cauſe to complain, becauſe their own Advice had been followed; and thereupon declared, that he would make no Alteration: But withal told them, that if they could make any Propoſition to him for the better Regulation of the Trade, (for they had themſelves mentioned a Charter) he would graciouſly receive any Propoſitions they would make, and gratify them in what was juſt; and ſo, notwithſtanding all Attempts which were often repeated, the Price ſet by the Lords was ratified for the Year following.

Shortly after many of the Merchants, who had always traded to the *Canaries*, petitioned the King that they might be incorporated, and that none might be permitted to trade thither but ſuch as would be of that Corporation, and obſerve the Conſtitutions which ſhould be made by them: Which Petition was preſented to the King at the Council-Board; and being read, his Majeſty (according to his Cuſtom in Matters of Difficulty and publick Concernment) directed it to be laid aſide, and read again on that Day Month; in which Time his Majeſty preſumed that all who would oppoſe it, would preſent their Reaſons and Objections againſt it, which he was very deſirous to hear. At the Day appointed, though there were no Petitions againſt it, yet it was obſerved that there were many of the moſt eminent Merchants of that Trade whoſe Names were not to the Petition, nor appeared deſirous to have a Charter granted; which his Majeſty conſidering, put off the Debate for another Week; and directed, that the other Merchants by Name ſhould be deſired to be preſent, and to give their Advice freely upon the Point: And there was at that Day a very full Appearance; when his Majeſty directed, that a Relation ſhould be made to them of the whole Progreſs that had been made in the Buſineſs, and the Damage and Diſhonour the Nation underwent in carrying on of that Trade; that many Merchants had preſented a Petition to him, containing an Expedient to bring it into better Order, but finding them not to appear in it, and being informed that they were moſt engaged in that Trade, he had

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ſent for them to know their Opinion, Whether they thought what was propoſed to be reaſonable, and fit to be granted? And if ſo, Why they did not concern themſelves in it? They anſwered, That the Reaſon why they had not appeared in it was, becauſe they ſhould be Loſers by it, and therefore were not ſolicitous to obtain a Grant from his Majeſty to their own Damage; and ſo enlarged upon the Nature of the Trade, their long Experience in it, and the Greatneſs of their Stock, which they ſhould not be allowed to continue under any Regulation: But as they did not think themſelves obliged to be ſolicitous for a Change, ſo they could not deny, being required by his Majeſty to ſpeak the Truth, but that the Propoſition that was made was for the publick Good and Benefit of the Kingdom, and that they could conceive no other Way to redeem that Trade, and the Nation, from the Inſolence which the *Spaniard* exerciſed upon us; implying, that if his Majeſty would command them, they would likewiſe concur, and join in carrying on the Service. To which his Majeſty giving them gracious Encouragement, they all departed of one Mind, his Majeſty remaining confirmed in the former Opinion he had of it. But there remained yet an Objection which was principally inſiſted upon by the Miniſters of the Revenue, who alledged very reaſonably, that this new-modelling of the Trade muſt produce ſome Alteration, and would meet ſome Oppoſition from the *Spaniard*, which for the Time would leſſen the Cuſtoms, and entitle the Farmers to a Defalcation. The Petition was therefore referred to the Farmers of the Cuſtoms, who were to attend the next Council Day: And being then called in, they acknowledged, that the Deſign propoſed would prove very profitable to the Kingdom in many Reſpects, upon which they enlarged; and that in the End it would not be attended with any Diminution of the Cuſtoms; but for the preſent, they ſaid, they could not but expect that the Obſtinacy and Contradiction of the *Spaniard* would give ſuch a Stop to Trade, at leaſt for one Year, that if his Majeſty did not reimburſe them for what ſhould fall ſhort in the Cuſtoms, they muſt look to be very great Loſers; the Merchants, on the other Hand, offering to be bound, that if they did not the firſt Year bring in as much as had been uſually entered, they would make good what ſhould be wanting to the Farmers upon a Medium; and his Majeſty himſelf declared, that he would not, for a ſmall Damage to himſelf, hinder the Kingdom from enjoying ſo great a Benefit; and thereupon he commanded the Solicitor-General, who then attended the Board, to prepare ſuch a Charter, as might provide for all thoſe good Ends which were deſired in the Petition, and which had been ſo largely debated. And, I believe, there was never a greater Concurrence of the Board in any Direction.

Many Months paſſed before the Charter was drawn; in which Time I never heard of the leaſt new Objection made againſt it, or that any Man was unſatisfied with it. After it was engroſſed, and paſſed the King's Hand, it was brought to the Great Seal; and then the Lord-Mayor of *London* and the Court of Aldermen had entered a *Caveat*, and I appointed a Day to hear Parties. The City alledged an Order made a Year or two before by the King in Council, upon a Complaint then exhibited by the Court of Aldermen againſt the *Turky* Company, and other Corporations, in which they ſaid there were very many Merchants of the beſt Trades and greateſt Eſtates in the City, who would never take out their Freedom of the City, and ſo refuſed to bear any Charge or Office in it, to the very great Prejudice and Diſhonour of the City, and of the Government thereof; they being by this Means compelled to call inferior Citizens to be Aldermen, before they had Eſtates to bear the Charge of it, whilſt the graveſt and richeſt could not be compelled to take it, becauſe they were not Freemen: Beſides the Rules which the King gave upon the Difference then in Queſtion, he was pleaſed to declare, and appointed it to be entered as an Order in the Council-Book, that Proviſion ſhould be made, that in all Charters which he ſhould hereafter renew or grant to any Companies or Corporations within the City of *London*, that they ſhould firſt make themſelves Freemen of the City, if they were not ſo before; and therefore that this Charter ſhould not paſs the Seals, before ſeveral Members, who were named in it, had made themſelves Freemen of the City, by which they might be made liable to the Charges of it. The Merchants could not deny, that many of them were not yet Freemen, nor reſolved to be: They ſaid, they had never heard of this Order: And I declared to them, that I could not ſeal the Charter before they had given Satisfaction in it; and they ſeemed as poſitive that they would rather be without their Charter, than ſubmit to the other Inconvenience, and ſo they departed then; but ſhortly after they agreed to the Obligation, and a Clauſe to that Purpoſe was entered in the Charter in the King's Preſence, and ſo returned to me to have the Seal fixed to it.

There were, by this Time, ſeveral other new Caveats entered againſt it; all which I heard, and ſettled every one of them to their joint Satisfaction. I heard then that there would be ſome Motions for the ſtopping it in the Houſe of Commons; and ſome Parliament-Men who ſerved for the Weſtern Boroughs came to me, and deſired me that I would not fix the Seal to it till they ſhould be heard, ſince it would undo their Weſtern Trade; and told me they reſolved to move the Houſe of Commons to put a Stop to it. I informed them of the whole Progreſs it had had, and told them I believed that they would hardly be able to offer any good Reaſons againſt it: However, ſince it was known that the Parliament would be prorogued within ten or twelve Days, I would ſuſpend the Sealing the Charter whilſt the Houſes ſat, to the End that they might make any Objections againſt if they thought fit: But the Parliament roſe ſhortly after, without further taking Notice of it; nor did thoſe Parliament-Men, or any others, further ſolicit me againſt the paſſing of it; and ſo I affixed the Great Seal to it according to my Duty. Thereupon the Company choſe a Governor and other Officers, according to their Charter, and made ſuch Orders and By-Laws as they thought fit, for the carrying on and Advancement of their Trade; which they might alter when they found it convenient; and for the preſent they reſolved upon a Joint-Stock, aſſigning ſo many Shares to particular Men. In this Compoſition and Diſtribution there happened ſome Difference between themſelves, which could not be taken Notice of Abroad; and even ſome of them, who firſt petitioned, and were moſt ſolicitous to procure the Charter, did what they could to hinder the Effect of it; ſent privately to their Factors at the *Canaries* to oppoſe any Orders which ſhould be ſent from the Governor and the Company; and that they ſhould do all they could to incenſe the *Spaniards* againſt the Charter, promiſing that their Wine ſhould be taken off in Spite of the Corporation: Whereupon, great Diſorders did ariſe in the *Canaries* between the *Engliſh* themſelves; and by the Conjunction of the *Spaniards* with thoſe few *Engliſh* who oppoſed the Charter, they proceeded ſo far as to ſend the principal Factors for the Company out of the Iſland to *Spain*, and to make a public Act by the Governor and Council there, that no Ship belonging to the Company ſhould be ſuffered to come into the Harbour, or to take in any Lading from the Iſland: All which were tranſacted there many Months before it was known in *England*, and probably would have been prevented, or eaſily reformed, if the breaking out of the Plague at *London*, and the War, had not reſtrained all *Engliſh* Shipping from going to the *Canaries* for the Space almoſt of a full Year; which Intermiſſion likewiſe gave ſome Advantage here to the Merchants who oppoſed the Charter, by the not Return of their ſeveral Stocks within the Time promiſed by the Company.

When the King was at *Oxford*, and heard what had paſſed at the *Canaries*, ſome Merchants appeared there to petition againſt the Charter, whereof there were ſome who were the firſt Petitioners for it: His Majeſty appointed a Day for the ſolemn Hearing of it, in the Preſence of his Privy-Council, the Governor being likewiſe ſummoned to be there. Upon opening all their Grievances, the Petitioners themſelves confeſſed, that they could not complain of the Charter; that it was a juſt and neceſſary Charter, and for the great Benefit of the Kingdom, though ſome private Men might for the preſent be Loſers by it; that their Complaint was only againſt their Conſtitutions and By-Laws, and their ſevere Proſecution of them contrary to the Intention of the Charter itſelf; inſtancing, among other Things, the very ſhort Day limited by the Charter, after which they could not continue their Trade without being Members of the Corporation; and that Day was ſo ſoon after the Sealing of the Charter, that it was not poſſible for them to draw their Stock from thence in ſo ſhort a Time. When they had finiſhed all their Objections, the King obſerved to them, that they complained only of what themſelves had done, and not at all of the Charter, which gave them only Authority to chuſe a Governor, and make Conſtitutions and By-Laws; but directed not what thoſe Conſtitutions and By-Laws ſhould be, which were the Reſult of their own Conſultations, in which the major Part muſt concur; and of that Kind their Joint-Stock was one, which, with the reſt, they might alter again at their next Court, if the major Part were grieved with it: But becauſe they had complained of ſome Particulars, in which they ſeemed to have Reaſon on their Side, his Majeſty expreſſed a Willingneſs to mediate and make an Agreement between them, and thereupon bid the Governor anſwer ſuch and ſuch Particulars, which ſeemed to have moſt of Juſtice; which he did very much at large, making it clearly appear that they had, in Truth, little Cauſe of Complaint; as to the ſhort Day which was aſſigned to them for drawing away their Stocks, which had the greateſt Semblance of Reaſon, he ſaid they had no Reaſon to complain of Want of Warning, for that the Day was well enough known to them long before the Sealing of the Charter, and might very well have been complied with; but that they knew likewiſe, that afterwards the Time was enlarged to a Day deſired by themſelves, that there might be no Cauſe of Diſcontent; and thereupon read the Order of the Court to that Purpoſe, which they could not deny in Concluſion; ſince it appeared that their Stock ſtill remained there, which in Juſtice belonged to them, whether by their Fault or Misfortune it had not been drawn over. The King perſuaded the Governor, and his Aſſiſtants, to give them ſuch Satisfaction in that Particular and others, that before they retired from his Majeſty's Preſence, they were unanimouſly agreed upon all their Pretences; and though ſome of the Lords, upon ſome Inſinuations and Diſcourſes they had heard, had believed the Company to be in the wrong, they were now fully convinced of the contrary, and believed the Charter to be founded upon great Reaſon of State, and that the Execution of it had been very juſtifiable, and with great Moderation; and it is to be obſerved, that the Parliament being then aſſembled at *Oxford*, there was not the leaſt Complaint againſt that Charter, or Corporation.

This was the whole Progreſs of that Affair, and all that I know of the Proceeding in it; in which I muſt confeſs, though I had no Hand in the Contrivance, I was fully ſatisfied in the Juſtice and Integrity of it, and even in the Neceſſity in Reaſon of State; and therefore, upon all the Addreſſes made to the King or Council in that whole Tranſaction, I did, it may be, appear more ſolicitous and warm for the Diſpatch than other Men; and yet I never remember a fuller Concurrence in the whole Board than in this Advice; nor did my Inclination towards it proceed from any other Motive than that of the Publick Good, without the leaſt Temptation to, or Imagination of any Profit or Advantage to myſelf, to which I have never been thought to be ever inclined; and the Delays I uſed in the paſſing this Charter, after it came to be ſealed, and my giving Time for the weighing all Objections, and ſo much oppoſing the Company, with reference to their being made Freemen of the City, that they departed from me with a Reſolution to proſecute the Charter no farther, are no Signs that I had ſuch a Mind to pleaſe them as a Man would have who was corrupted by them, or who was to have a Share in the Profit of the Patent. For the granting any Injunctions in *Chancery* to ſtop Proceedings at the Law, againſt that or any other Charter, I cannot comprehend the Meaning of that Charge; and do preſume that I have never granted any Injunctions in that Court, but what was agreeable to the Courſe and Juſtice of it, and I am ſure was always done in publick, and upon Debate in the Court.

The Fourth Article is, *That I have adviſed and procured divers of his Majeſty' Subjects to be impriſoned againſt Law, in remote Iſlands, Garriſons, and other Places, thereby to prevent them from the Benefit of the Law;*

Law; and to introduce Precedents for impriſoning of other of his Majeſty's Subjects in like manner.

I know not what to anſwer to this Article, it being ſo general, and no particular Perſon being named; but it is generally known, that I have never taken upon me to commit any Man to Priſon, but ſuch who, by the Courſe of the *Chancery* for Matters of Contempt, are juſtly committed. It is probable that I have been preſent at the Council-Board when many Perſons have been ordered to be committed, and whoſe Commitment hath, by the Wiſdom of that Board, been thought juſt and neceſſary; and therefore I am not to anſwer apart for any thing done by them; only I may ſay, that I was frequently of Opinion that the Commitments were very juſt, and very neceſſary; and it is notoriouſly known, that by ſuch Commitments a Rebellion hath been ſometimes prevented, and that other Perſons, who have been afterwards attainted and executed for High Treaſon, have, upon their Examination, and at their Death, confeſs'd that their Purpoſe had been to riſe in Arms at ſuch and ſuch Times, if their Friends, upon whom they had principally relied, had not been then committed to Priſon; and I well remember, that it was thought fit that moſt of the Perſons who ſtand attainted for the Murther of the late King, his Majeſty's Royal Father, ſhould be removed out of the *Tower*, and diſperſed into ſeveral Iſlands and Garriſons; and if any other Perſons have been likewiſe ſent thither, I preſume it was upon ſuch Reaſon, as, upon a due Examination thereof, will make it be thought very juſt.

The Fifth Article is, *That I have corruptly ſold ſeveral Offices contrary to Law.*

This Charge I utterly deny.

The Sixth Article is, *That I have procured his Majeſty's Cuſtoms to be Farmed at under Rates, knowing the ſame; and great pretended Debts to be paid by his Majeſty, to the Payment whereof his Majeſty was not in Strictneſs bound; and have received great Sums of Money for procuring the ſame.*

I have never had any thing to do in diſpoſing of his Majeſty's Cuſtoms, or any other Part of his Revenue; only for ſome ſhort Time after his Majeſty's firſt Arrival in *England*, I, amongſt others of my Lords of the Council, was a Commiſſioner of the Treaſury; during which Time, if I am not very much miſtaken, there was no Farm lett of any of the Revenue, and the Cuſtoms were put into the Hands of Commiſſioners, to the end that a Computation might be made as near as was poſſible of the true Value of them, before that it ſhould be put into a Farm, which every Man conceived would be fit to be done as ſoon as might be. The White Staff was ſhortly after given to the Earl of *Southampton*, and the Chancellorſhip of the *Exchequer* to the Lord *Aſhley*, I having then reſign'd it, and having been before poſſeſs'd of it at the Time when the King returned into *England*; and from the Time that theſe two Officers of the Revenue were made, which determined the former Commiſſion, I never intermeddled in the Cuſtoms, or any other Branch of the Revenue; except when the King commanded me to be preſent in ſome Conſultations which he had with my Lord Treaſurer, when there were other of my Lords likewiſe preſent; that excellent Perſon always reſorting to the King, for his Direction in all Matters of the leaſt Difficulty which occurred to him in the Adminiſtration of his Office; and except the Lord Treaſurer himſelf (with whom I had the Honour to have held a long and a faſt Friendſhip) did deſire to confer with me, as he very often did upon many Particulars of his Office, believing that I was not altogether ignorant in that Adminiſtration, with which I had been formerly ſo well acquainted; and that I preſume might be the Reaſon why he did oftentimes procure me to be join'd with him in References from the King, upon Matters wholly relating to his own Office. But I never ſuffered particular Applications to be made to me in thoſe Caſes, nor had ever any ſecret Conference with any Perſons who were concerned in ſuch Pretenſions. What is meant by my having procured his Majeſty's Cuſtoms to be farmed at under Rates, knowing the ſame, and great pretended Debts to be paid by his Majeſty, to the Payment whereof his Majeſty was not in Strictneſs bound, I cannot imagine, except it relates to the Payment of a Debt due from his late Majeſty to ſome of the Farmers; in which, tho' I had no more to do than in giving Information, and my particular Advice to his Majeſty, in the Preſence of my Lord Treaſurer, the Chancellor of the *Exchequer*, and other of my Lords, and ſo am not myſelf reſponſible for what his Majeſty did thereupon, and he did nothing but with the Approbation and Conſent of all the reſt; yet I think myſelf obliged upon this Particular, which ſo much concerns the Honour and Juſtice of the late King, and of his preſent Majeſty, to enlarge and relate all I know of what their Majeſties did, and what induced his preſent Majeſty to do his Part of it. It is notoriouſly known, that before the late Troubles, and in the very firſt Entrance into them, his Majeſty was neceſſitated to borrow very great Sums of Money from his then Farmers of his Cuſtoms, and to oblige them to ſtand perſonally bound for many other great Sums of Money which other Men lent to his Majeſty upon their Security. That thereupon, and for the Repayment of thoſe Sums of Money which the Farmers had advanced, and for ſecuring them from any Damage for thoſe Monies which others had lent upon their Obligations, his Majeſty, with the Advice of the then Lord Treaſurer and Chancellor of the *Exchequer*, had granted a farther Leaſe of his Cuſtoms to thoſe Farmers for Three or Four Years to come, after the Expiration of their former Leaſe; with a Covenant on his Majeſty's Part, to pay the juſt Intereſt of Eight *per Cent.* for all ſuch Monies as were advanced by them, or for which they ſtood bound; and likewiſe that they ſhould, out of their growing Rent, deduct all ſuch Sums of Money by the Year, as they had lent, or were bound for. It is as well known, that after the Beginning of the Parliament in 1640, and before the Commencement of the ſecond Leaſe, the *Houſe of Commons* not only forced the ſaid Farmers to pay a very great Sum of Money for their Preſumption in receiving Cuſtoms and Impoſitions upon Merchandize in the former Years, when, as they pretended, ſuch Payments were not due; but took alſo from them their new Leaſe granted to them by the King, and ſo left them without any Capacities of reimburſing themſelves of the Money they had lent, and likewiſe in the Mercy of their Creditors to whom they ſtood bound; many of whom quickly began to exerciſe that Severity towards them, that many of the poor Gentlemen had their Eſtates quickly extended upon Judgments and Recognizances, and their Perſons taken in Execution, and committed to Priſon; where ſome of them who had been known to have great Eſtates, as Sir *Paul Pinder*, and others, were forced to end their Days. There were very few Circumſtances in the late King's Misfortune, which gave him ſo much Trouble, or ſo much afflicted him, as the Senſe he had of the hard and unjuſt Sufferings thoſe poor Gentlemen underwent for him, and their Affection to his Service; which he often mentioned, and as often declared, that he held himſelf obliged to make them full Reparation, as ſoon as God ſhould enable him. And after he had vouchſafed to make me his Chancellor of the *Exchequer*, he frequently ſpoke to me of it; of the very good Opinion he had of the Men, of the great Services they had done for him; and commanded me expreſsly, that whenever it ſhould fall within my Power, I would do them all the Right I could. And of this I did often inform his Majeſty during the Time he was Abroad, and after his Return, without any other Motive than his Father's Command, and his own Honour, having myſelf never had any Degree of Friendſhip with any of the Perſons concerned, and a very ordinary Acquaintance with ſome of them. Upon his Majeſty's happy Return, thoſe Gentlemen who were alive of the old Farmers (which, as I remember, were Sir *John Jacob*, Sir *Job Harby*, Sir *Nicholas Criſpe*, and Sir *John Harriſon*) applied themſelves to the King, having lain ſeveral Years, and then remaining in Execution in ſome Priſon, and having had their Eſtates ſold, upon the Proſecution of thoſe Creditors to whom they were bound for Monies lent to his Majeſty. As ſoon as Care was taken for collecting the Revenue, thoſe Four Gentlemen named before, and Two others who had ſerved his Majeſty very well, were appointed his Commiſſioners for the collecting the Cuſtoms and Duties upon Trade; in which Collection they continued for above a Year, or thereabouts; during which Time many of their Creditors, who had generouſly forbore to proſecute them whilſt they were in Priſon and undone, began now to commence their Actions againſt them, preſuming they were then, or would ſhortly be able to ſatisfy them: Whereupon his Majeſty commanded my Lord Treaſurer, and me, with ſome other Lords, as I remember, to ſend for thoſe Creditors, and to declare to them, that his Majeſty would, in a ſhort Time, enable his Farmers to pay them their juſt Debts, which he well knew were contracted for his Service; and that he would take it very well from them, if they would for the preſent give no Obſtruction to his Service, by the Proſecution of thoſe Perſons at Law, whoſe Time was ſolely taken up in the neceſſary Service of his Majeſty: Whereupon they willingly deſiſted from that Proſecution; and many of them finding now, that by his Majeſty's Favour they were like to receive their Debts, which before they thought deſperate, they frankly remitted the Whole, or Part of the Intereſt, that in Strictneſs of Law was ſtill due to them. His Majeſty, ſhortly after, judging it beſt for his Profit to determine the Collection by Commiſſion, and to lett the Whole to Farm, gave Direction to the Lord Treaſurer to confer and treat with any fit Perſons who deſired the ſame. Many Overtures were made by ſeveral Perſons, and ſome applied themſelves directly to his Majeſty; upon which, and after a competent Time in conſidering all that was propoſed, the King appointed a Day when he would be attended by my Lord Treaſurer, and other of my Lords, and when all the Pretenders ſhould likewiſe be preſent, and he would then and there declare his own Judgment; having firſt declared to the Commiſſioners, whereof Four were old Farmers to whom ſo much Money was due, that whoſoever ſhould take the Farm, they ſhould be obliged to pay them their juſt Debt at ſuch Times, and by ſuch Proportions as his Service could bear; but as to the Letting the Farm itſelf, he ſhould neither conſider the Debt he owed them, nor the Sufferings they had undergone, but only the Rent they ſhould offer; which, if as much as any Body elſe would give, he would preſer their Perſons before others; but if any other fit Men would offer more than they thought fit to give, they ſhould be his Farmers; and therefore wiſhed them well to conſider what they would propoſe to him. After two Days ſpent by his Majeſty in Conference with ſeveral Pretenders apart, and finding that the Propoſitions made to him by the old Farmers, with whom the other Two were to be joined who had ſerved with them as Commiſſioners, were at leaſt as much, if not more for his Profit than any which had been made by the reſt, he declared that the Farm ſhould be lett to thoſe who had been his Commiſſioners: Which was at that Time underſtood to be ſo far from a good Bargain, that the Two Commiſſioners who were not concerned in the great Debt, utterly refuſed to meddle with the Farm at ſo great a Rent; the other Four publickly declaring at the ſame time, that they would not give the Rent but in Contemplation of their Debt, which they thought they ſhould ſooner and better receive, when it ſhould be aſſign'd upon their own Collections, than when it ſhould be charged upon new Farmers; but were Suitors to his Majeſty, that he would oblige the other Two (Sir *John Wolſtenholme* and Sir *John Shaw*) to be joint Farmers with them; which his Majeſty did, by making them a gracious Promiſe, that if they ſhould be Loſers he would repair them: And thereupon Directions were given to *Mr. Attorney-General* to prepare a Grant accordingly; and I do not know there was one diſſenting Voice from what his Majeſty inclined to do upon the whole Debate of that Matter, the ſame appearing to every Man to be moſt juſt and reaſonable.

The Farm being thus ſettled, the old Farmers were directed to bring their Accompt to my Lord Treaſurer; by which it ſhould manifeſtly appear how much the late King was juſtly and truly indebted to them, and how thoſe Debts were incurred; that ſo, upon a juſt Computation, ſuch a Satisfaction might be made to them, as was conſiſtent with the preſent State of his Majeſty's Occaſions. Many Months, if not a whole Year, were ſpent in the Examination of thoſe Accompts before the Auditors; who, beſides the Exceptions they took for want of ſome Formalities, in the Proof of ſome Monies paid, which after Twenty Years of Licence, in which all their Books and Papers had been taken, their Houſes plundered, their Perſons impriſoned, and in which ſo many Perſons employed by the King to receive, and by them to pay Money, were dead,

could hardly be made with the uſual Exactneſs, made likewiſe ſeveral Certificates of particular Caſes, which required further Direction; and the Lord-Treaſurer would never take upon himſelf to give thoſe Directions, only declaring to them, which he had frequently done, that, in regard his Majeſty was not ſtrictly bound in Juſtice to pay that Debt due from his Father, but that his preſent Majeſty's generous and royal Diſpoſition had prevailed with him to pay that juſt Debt, whereby they might be preſerved from Ruin, in which he ſaid he fully concurred with his Majeſty; but that he would never adviſe him, on the contrary, he would always diſſuade his Majeſty from paying or allowing any Intereſt, though paid by them, which would ſwell the Debt to ſuch a Proportion, that his Majeſty could never undertake the Payment of it: Which Determination, how great ſoever their Loſs appeared to be, ſeemed to be ſo juſt, at leaſt ſo neceſſary for the King, that they wholly referred it to his Majeſty; hoping that it might prevail with many of their Creditors, not to exact it from them, though the Sale of their whole Eſtates had made Satisfaction to others for the whole Intereſt as well as for the Principal. When the Auditors Certificate was ready, and all the Doubts and Queſtions, which did ariſe thereupon, were clearly ſtated, his Majeſty vouchſafed again to be preſent, with the other Lords, who had from the Beginning aſſiſted in the Examination of that Buſineſs; and then the Lord-Treaſurer declared to his Majeſty, what he had before ſaid to the Perſons concerned, that though he willingly approved his Majeſty's Goodneſs in taking upon himſelf that great Debt, yet that he would by no Means give his Advice or Conſent that he ſhould pay or allow any Intereſt for it. Upon the whole Matter, and upon all the Doubts ſtated to his Majeſty, and after the Rejection of ſeveral conſiderable Sums of Money demanded by them, and for the Payment whereof ſuch direct Proof was not made, as is required by the Courſe of the *Exchequer*; though I think moſt Perſons who were preſent were, in their private Conſciences, well ſatisfied that thoſe Sums had been, in Truth, paid, as was alledged; there appeared to his Majeſty to be juſtly due to them the Sum of Two Hundred Thouſand Pounds Principal Money for almoſt Twenty Years, and for which they had paid ſo much Intereſt; and his Majeſty thought it very juſt, and, with many gracious Expreſſions to them of his Purpoſe and Reſolution further to repair them as he ſhould be able, gave Order to the Lord-Treaſurer that the ſaid Debt of Two Hundred Thouſand Pounds ſhould be paid to them in Five Years; that is, by Forty Thouſand Pounds for every Year out of the Rent of the Farm; and that all Inſtruments neceſſary for their Satisfaction and Security ſhould be preſently given to them, whereby they might be able to comply with their Creditors, and avoid their Importunity. I do confeſs myſelf to have been preſent at theſe Agitations, and to have contributed my humble Advice and Opinion to his Majeſty that he ſhould pay this Debt; which I thought myſelf obliged to do, as well as a faithful Counſellor to his preſent Majeſty, as in Diſcharge of my Duty and Obligation to his Father; and I have very good Reaſon to believe, that if that Two Hundred Thouſand Pounds be paid according to his Majeſty's Direction, of which I know nothing, and of which the Heirs and Executors of thoſe Farmers who are dead, as well as the four preſent Farmers have their equal Proportions, that the ſaid Perſons have not at this Day half the Eſtates which they had in the Year 1640, when they entered into thoſe Engagements for his Majeſty: Nor was there any one Perſon preſent at the Agitation of this Affair, who ſeemed in the leaſt Degree to differ in Opinion, or to diſſuade his Majeſty to give that Satisfaction for that Debt which he vouchſafed to do.

I do likewiſe very willingly confeſs, that I have in the manner aforeſaid, and being called to adviſe, given my Opinion for the Payment of many other conſiderable Debts incurred by his late Majeſty; and for which many Perſons of Honour, who adhered to him during the War, were perſonally bound for him, and whoſe Eſtates had been extended, and their Perſons impriſoned for the ſame; many of whom were then in Execution, and in Priſon when his Majeſty returned, and others then ſued in *Weſtminſter-Hall*, in his Majeſty's own Court. His late Majeſty having granted under his Great Seal of *England*, to ſeveral Perſons intruſted for the reſt, many of his Foreſts, Parks, and other Lands, for their Security and Indemnity, who were or ſhould ſtand bound for him, for Monies which were then borrowed for, and applied to, the neceſſary Support of himſelf and his Army, and to no other Purpoſe; and in that Grant I was particularly entruſted, as well by the Deſire of the Perſons concerned, as by his Majeſty's Command, to be ſolicitous for their Satisfaction: And I cannot deny that I have never been more delighted, than when I have been able to procure any Satisfaction for thoſe Perſons who were ſo bound and ſo ſecured; nor ever more troubled, than that I could do no more, and that there remained ſo many ſtill unſatisfied, and almoſt undone for thoſe Debts ſo contracted, of which Number I believe there are ſtill too many. But having made theſe clear Confeſſions of what is Truth, and what I did do in theſe Tranſactions, I muſt as poſitively deny, that ever I procured or adviſed the letting his Majeſty's Cuſtoms, or any other Part of his Revenue; on the contrary, that I uſed all the Ways I could to advance the Rents without reſpect of Perſons; and I preſume I was never preſent at the Letting of any Farm that any Man would have given more for, than they did to whom it was lett, what Offers ſoever were made afterwards, when his Majeſty had contracted himſelf, and a Grant was iſſued accordingly, under the Great Seal of *England:* And I do as poſitively deny, that ever I received or expected the leaſt Sum of Money, or Money-worth, for any Leaſe made by his Majeſty of his Cuſtoms, or any other Part of his Revenue; or for the Payment of any one Debt made by his Majeſty, to which he was or was not bound; I having never had any other Motive for the Performance of thoſe Offices, but the pure and entire Conſideration of his Majeſty's Honour, Juſtice and Profit, and my own Inclination to gratify worthy Perſons, who in Juſtice ought to be, or might with Juſtice be, gratified and obliged, and who have commonly been ſuch Perſons to whom I have had no kind of Obligation.

The Seventh Article is, *That I have received great Sums of Money from the Company of* Vintners, *or ſome of them, or their Agents, for enhancing the Prices of Wines, and for freeing them from the Payment of legal Penalties which they had incurred.*

If I had been in the leaſt Degree guilty of this Charge, it would very eaſily have been proved, and the *Vintners* would very gladly have helped them in it, being Perſons who never thought themſelves beholden to me, and ſo not obliged to conceal any of my Corruptions. They well knew that I could never be prevailed with to conſent to the enhancing the Prices of their Wine, and that I never had the leaſt Sum of Money from them in my Life. I remember, at a Time when his Majeſty had refuſed to grant all their other Petitions, the Company of *Vintners* did complain that there were ſo many Informations againſt them proſecuted by Informers in the *Exchequer*, that they muſt give over their Trades, and be likewiſe undone, if they were ſeverely proſecuted for what was paſt; and therefore beſought his Majeſty in Council, that he would pardon what was paſt, and that for the future they would treſpaſs no more. Whereupon his Majeſty thought it worthy of his Mercy to ſhelter them for the preſent from that Proſecution; and thereupon commanded his Attorney-General to call the Informers before him, and to appoint the *Vintners* to pay them ſuch reaſonable Rewards for their Pains as he thought fit, and thereupon he ſhould enter a *Noli Proſequi*; but his Majeſty charged them for the future not to run into the ſame Danger: And as this Grace from his Majeſty was not upon my Promotion, but purely from his own Bounty and Goodneſs, from which no Perſon there diſſuaded him, as I remember, ſo I never received the leaſt Profit from the ſame.

The Eighth Article is, *That I have in a ſhort Time gained to myſelf a far greater Eſtate than can be imagined to be lawfully gained in ſo ſhort a Time; and, contrary to my Oath, have procured ſeveral Grants under the Great Seal from his Majeſty, to myſelf and Relations, of ſeveral of his Majeſty's Lands, Hereditaments, and Leaſes, to the Diſprofit of his Majeſty.*

I wiſh with all my Heart that the Truth of this Article (which I preſume hath drawn on all the reſt) were clearly known to all the World; that they who in Truth believe that I have ſo great an Eſtate, were very well informed what it is, and they would then clearly diſcern that I need not be aſhamed of having gotten ſuch an Eſtate, nor needed to have any Recourſe to any ill Arts or Means for the obtaining thereof; they would know that I have been ſo far from procuring ſeveral Grants under the Great Seal of *England* from his Majeſty, to myſelf and Relations, of ſeveral of his Majeſty's Lands, Hereditaments, and Leaſes, to the Diſprofit of his Majeſty, that I never moved his Majeſty in my Life, for any one Grant to myſelf, or any of my Relations. If his Majeſty's Royal Bounty did diſpoſe him to confer ſomewhat of Benefit and Advantage upon an old Servant, who had waited upon his Father and himſelf near Thirty Years in ſome Truſt and Employment; I hope it ſhall not be imputed as a Crime in me to receive his Favours. I am far from believing or imagining that the poor Services I ever did, or can do, were in any Degree proportionable to his Majeſty's Bounty; yet ſince his Goodneſs thought me fit for it, I hope many others will think ſo too; at leaſt as fit as ſome Men, who have received greater Marks and Proportions of it than I have done, and who, though they might ſerve much better, had not ſerved ſo long. I forbear to enlarge upon this particular Charge, becauſe I conceive that it is now evident to many who were wrought upon by thoſe who did not believe it themſelves, to think my Eſtate to be very great, that the Information they received was without ground: And whoever conſiders, that the firſt Year after the King's coming in yielded juſtly more Profit to the Great Seal than I ever received in all the Years following, and ſome particular Acts of Bounty in his Majeſty conferred on me, without the leaſt Suit of my own, and unthought of by me, will believe that my Fault is greater, in having no better an Eſtate, than that what I have hath been gotten by Corruption. I have none of his Majeſty's Lands but what I bought, for as much as any body would pay for it, of thoſe who had the ſame granted to them out of his Majeſty's Bounty, and that Grant confirmed by Act of Parliament; and, I preſume, it cannot have fallen from his Majeſty's Memory, and I am ſure is well known to ſome Perſons of Honour yet alive, that when his Majeſty was graciouſly pleaſed, at his firſt coming over, to offer me ſome Land which had never yielded the Crown any thing, I abſolutely refuſed to receive it, becauſe it was generally thought to be of great Value, as I believe it is; and therefore I would not expoſe myſelf to the Envy which naturally attends ſuch Donations, having in truth never had an immoderate Appetite to make haſte to be rich; and as much apprehended the being accuſed of Witchcraft or Burglary, as of Bribery and Corruption. In a Word, I do declare, that my Debts being diſcharged, for which I pay Intereſt, all my Eſtate is not worth, being ſold, the Money I have received from his Majeſty's own Royal Bounty, and far from being ſuitable to the Quality I yet hold; and which was never obtained by my own Ambition, as many Perſons of Honour yet alive can teſtify.

The Ninth Article is, *That I introduced an arbitrary Government in his Majeſty's foreign Plantations, and have cauſed ſuch as complained thereof before his Majeſty and Council, to be long impriſoned for ſo doing.*

Though I cannot poſſibly comprehend the full Meaning of this Article, yet becauſe I have heard of many Diſcourſes made of the Authority I aſſumed over the Plantations, and the great Advantage and Profit I have drawn to myſelf from thence, I am very willing to take this Occaſion to relate all that I know, and all that I have done with Reference to any of his Majeſty's Plantations; declaring in the firſt Place, that at his Majeſty's Return, and before, I did uſe all the Endeavours I could to prepare and diſpoſe the King to a great Eſteem of his Plantations, and to encourage the Improvement of them by all the Ways which could reaſonably be propoſed to him; and I was confirmed in this Opinion and Deſire, as ſoon as I had a View of the Entries in the *Cuſtom-Houſe*, by which I found what a great Revenue accrued to the King from thoſe Plantations, inſomuch as the Receipts from thence had upon the Matter repaired the Decreaſe and Diminution of the Cuſtoms, which the late Troubles had brought upon

on other Parts of Trade, from what it had formerly yielded. The firſt Conſideration that offered itſelf before the King, that related to the Plantations, was concerning the *Barbadoes*, which having been moſt diſcourſed of ſince, and, as I hear, with ſome Reflections upon me of Partiality and Injuſtice, I ſhall, in the firſt Place, ſet down all I know in that Affair, and how I came to ſpeak in it.

Before the Beginning of the late Troubles, the King had granted the Iſland of the *Barbadoes* to the Earl of *Carliſle* and his Heirs for ever, upon a Suppoſition that it had been firſt diſcovered, poſſeſſed, and planted at his Charge; and the ſaid Earl ſent a Governor and People thither, and enjoyed it to his Death, and by his Will ſettled it for the Payment of his Debts, which were very great: The Troubles falling out in a ſhort Time after, little or no Profit had been drawn from thence towards the Satisfaction of thoſe Debts, and the Executors and Truſtees totally neglected the taking Care of it, or proſecuting the Plantation; but in and after the War, many Citizens, Merchants, and Gentlemen, who were willing or forced to withdraw themſelves from *England*, tranſported themſelves thither, and there planted, without aſking any body's Leave, or without being oppoſed or contradicted by any body. About the Year 1647, or thereabouts, the late Earl of *Carliſle*, Son and Heir of the former Earl, to whom the Inheritance of that Iſland belonged, treated with the late Lord *Willoughby* of *Parham*, how that Iſland might be ſo ordered, that the Plantation might be advanced, and Profit made by it, which would at laſt redound to himſelf when the Debt ſhould be paid. The late King was then in the Hands of the Army; and with his Approbation and Conſent, it was agreed between the ſaid Earl and the ſaid Lord, that a Leaſe ſhould be made by the Earl of *Carliſle* to the Lord *Willoughby*, of all the Profits which ſhould ariſe out of that Plantation for the Term of twenty-one Years, as I remember; a Moiety of the whole Profits to be received by the Lord *Willoughby* himſelf, for his own Uſe, and Recompence of his Charge and Pains; and he was likewiſe to receive a Commiſſion from the ſaid Earl, to be Governor of that and the reſt of the *Caribbee* Iſlands (all which were comprehended in the Charter granted by the King to the Earl of *Carliſle*), and that a Commiſſion ſhould likewiſe be procured from the King, or the Prince of *Wales*, by which the ſaid Lord *Willoughby* was to be conſtituted Governor of the ſaid Iſlands. About that Time the Fleet, then in the *Downs*, returned to their Obedience to the King, withdrawing themſelves to the Coaſt of *Holland*, to offer their Service to the Prince of *Wales*, his Majeſty that now is; the Lord *Willoughby* coming likewiſe over then to him, to ſerve him in any Condition he pleaſed to employ him. I need not ſpeak of the Diſappointments of that Summer, and the ill Succeſs of that Fleet; but all thoſe Hopes being vaniſhed, and there being no preſent Employment for the Lord *Willoughby*, he then informed the Prince of what had paſſed between the Earl of *Carliſle* and him, with his Father's Conſent; which his Highneſs had likewiſe received from the King himſelf, with much Recommendation of the Lord *Willoughby*. I was then attending upon the Prince in *Holland*, as one of the King's Counſel aſſigned by him for that Service. Upon the underſtanding of this whole Caſe, the Prince, upon the unanimous Advice of the Council, thought fit to grant ſuch a Commiſſion of Governor of the *Barbadoes* and other Iſlands, as he deſired; and he had the more Reaſon to deſire it (notwithſtanding the Earl of *Carliſle*'s Grant and Commiſſion), becauſe the principal Planters upon the *Barbadoes* had been Officers in the King's Army, or of manifeſt Affection to him, or always looked upon as of his Party. With this Commiſſion the Lord *Willoughby* had, at his great Charge and Expence, tranſported himſelf to the *Barbadoes*, and was there received as Governor; and made a Contract with the Planters, that ſo much ſhould be paid upon the Hundred to the Earl of *Carliſle*, to whom the Propriety of the Whole belonged. But before this Agreement could be well executed, or any Profit drawn from thence, the Iſland was reduced to the Service of the Parliament, and of *Cromwell*, and a Governor appointed by them; the Lord *Willoughby* being ſent into *England*, where he remained till the King's Return, and had given unqueſtionable Evidence of his Affection to the King's Service, for which he had often been committed to Priſon before and after *Cromwell*'s Death.

As ſoon as the King returned, the Lord *Willoughby* (who had then eight or nine Years to come of his Leaſe formerly granted to him by the Earl of *Carliſle*, who was then likewiſe living, and ready to do any other Act to the Lord *Willoughby*'s Advantage) reſolved to return himſelf to the *Barbadoes*, and deſired the King to renew his Commiſſion to him for the Government; which his Majeſty was very willing to do, as to a Perſon he eſteemed very much, and who had ſpent very much of his own Fortune, as is notoriouſly known, in that Service: But the *Barbadoes* and all thoſe other Iſlands were now become of another Conſideration and Value than they had been of before the Troubles; the *Barbadoes* itſelf was (by that Confluence and Reſort thither as was mentioned before), ſo fully planted, that there was no Room for new Comers, and they had ſent very many of their People to the other Iſlands to plant; many Citizens of *London* had raiſed very great Eſtates there, and every Year had a great Revenue thence; and the King's Cuſtoms from that one Iſland came to a very great Sum of Money yearly. All theſe Men, who had entered upon that Plantation as a waſte Place, and with very great Charge brought it to that Perfection, and, with great Trouble, began now to apprehend that they muſt depend upon the good Will of the Earl of *Carliſle* and Lord *Willoughby* for the Enjoyment of their Eſtates there, which they looked upon as their own; all theſe Men joined together in an Appeal to the King, and humbly prayed his Protection: and that they might not be oppreſſed by thoſe two Lords, they ſaid, they were the King's Subjects; that they had repaired thither as to a deſolate Place, and had by their Induſtry obtained a Livelihood there, when they could not with a good Conſcience ſtay in *England*; that if they were now left to thoſe Lords to ranſom themſelves, and compound their Eſtates, they muſt leave the Country, and the Plantation would be deſtroyed, which yielded his Majeſty ſo great a Revenue; that they could defend themſelves by Law againſt the Earl of *Carliſle*'s Title, if his Majeſty did not countenance it by a new Grant of the Government to the Lord *Willoughby*; and therefore were

Suitors to his Majeſty not to deſtroy them by that Countenance. At the ſame Time, the Creditors of the late Earl of *Carliſle* (whoſe Debts were to to be ſatisfied by the Profits of that Plantation, by the Will and Settlement of the ſaid Earl) petitioned the King that they might be firſt provided for; their principal Money due to them at the Death of the Earl amounted to no leſs than Fifty thouſand Pounds, of which they had never yet received one Penny; and therefore that the Profits which ſhould ariſe ought in the firſt place to be applied to them, there having been many Families utterly ruined for want of their Money ſo due to them. The King appointed to hear all the ſeveral Pretences at the Council-Board, where they all attended with their Counſel; and after his Majeſty had ſpent three or four Days himſelf in hearing the ſeveral Allegations, and finding new Pretences and Difficulties every Day to ariſe (which ſhall be mentioned anon), his Majeſty appointed ſeveral of my Lords of the Council to conſider of the whole Matter, and to confer with the ſeveral Parties, and if it were poſſible to make an End between them by their own Conſent; otherwiſe to report the ſeveral Titles to his Majeſty, with ſuch Expedients as in their Judgments they thought moſt likely to produce a general Satisfaction, without endangering the Plantation, the Preſervation whereof his Majeſty took to Heart. I had the Honour to be one of that Committee, and took very much Pains in reading the Charters, Grants, and Leaſes, and many other Papers and Diſpatches which concerned that Affair, and conferred with ſeveral of the Perſons intereſted, to the end that I might the better diſcern what could be done, having never underſtood or heard any thing of the Matter, or that concerned that Plantation, otherwiſe than what I have before ſet down upon the Diſpatch of the Lord *Willoughby* in *Holland*; nor had I the leaſt Inclination or Byas to any Party. Upon the hearing all the Allegations before my Lords, the ſeveral Pretences and Titles appeared to us to be theſe; which we afterwards reported to the King.

The Lord *Willoughby* demanded nothing from the King but his Commiſſion to be Governor for the Remainder of the Years which had been granted to him by the Earl of *Carliſle*, to the end that he might receive one Moiety of thoſe Profits which ſhould ariſe to the Earl, and which had been aſſigned to him with the Conſent and Approbation of the late King, and his Majeſty that now is, upon which he had undertaken that Voyage, and ſpent ſo much of his Eſtate.

The Earl of *Carliſle*, while this Contention was depending, died, and by his Will deviſed his Intereſt in the *Barbadoes* to the E. of *Kinnoul*, who likewiſe petitioned the King for the preſerving his Right; but neither he, nor the Perſon under whom he claimed, had any Pretence till all the Debts were ſatisfied, nor did the Earl of *Kinnoul* demand any thing till then; but believed the Profit would ariſe yearly to ſo much, that the Debts would quickly be ſatisfied, and then the Whole would come to him.

There was another Title that preceded the Earl of *Carliſle*'s, which was that of the Earl of *Marlborough*, who alledged and proved it to be true, that the *Barbadoes* and thoſe adjacent Iſlands were firſt granted by the King to his Grandfather the Earl of *Marlborough*, then Lord High-Treaſurer of *England*, before the Earl of *Carliſle* had any Pretence thereunto; and that the Lord Treaſurer had afterwards conſented that the ſame ſhould be granted to the Earl of *Carliſle*, upon a full Contract, that he ſhould firſt receive for ever the Sum of Three hundred Pounds by the Year out of the firſt Profits of the Plantations; which Sum of three hundred Pounds had never yet been paid; and therefore the Earl of *Marlborough* deſired, as Heir to his Grandfather, to have Satisfaction for the Arrears, and that the growing Rent might be ſecured to him.

The Creditors were of two kinds: The firſt, and who had firſt petitioned the King, as was ſaid before, had an Aſſignment made to them by the Executors and Truſtees of the Earl of *Carliſle* upon his Will, and who, at his Death, owed them the full Sum of Fifty thouſand Pounds, or thereabouts: The other Creditors conſiſted of ſeveral Tradeſmen and Artificers, to whom the ſaid Earl was indebted for Wares and Goods which had been delivered for his Uſe, and of ſeveral Servants for their Arrears of Wages; and all theſe had, during the late Troubles, exhibited their Bill in *Chancery* againſt the Executors and Overſeers of the late Earl, and had obtained a Decree in that Court for their Satisfaction, out of the Profits of thoſe Plantations; which Decree ſtood confirmed by the Acts of judicial Proceedings; and as I remember their Debts amounted to Thirty thouſand Pounds, or thereabouts: None of the Creditors in general, of one or the other Sort, had ever received one Shilling from the Time that the Earl had firſt aſſigned it.

The Planters inſiſted poſitively, that the Charter granted to the Earl of *Carliſle* from the King was void in Point of Law; for which their Counſel alledged many Reaſons: And having ſpent much Time upon that Argumentation, they concluded with two humble Propoſitions to the King; firſt, That his Majeſty would give them Leave to proſecute in his Name in the *Exchequer*, and at their own Charge, to repeal that Grant to the Earl of *Carliſle*; by which they ſhould be freed from the Arbitrary Power and Oppreſſion which would be exerciſed upon them under the Colour of that Charter, and his Majeſty might receive a great Benefit to himſelf, by taking the Sovereignty to himſelf, to whom it juſtly belonged: And in that caſe they offered in their own Names, and for the reſt of the Planters who were in the Iſland, to conſent to an Impoſition of ſo much upon the Hundred, which they confidently avowed would amount to at leaſt Ten thouſand Pounds a-Year; out of which his Majeſty's Governor might be well ſupported, and his Majeſty diſpoſe of the Overplus as he thought fit. Secondly, If his Majeſty would not ſuffer the Charter to be repealed, that he would leave thoſe who claimed under the Earl of *Carliſle*'s Patent to their Remedy at Law, and leave the Planters to their own Defence; which they hoped in Juſtice could not be denied to them, ſince they alone had been at the Charge to ſettle the Plantation, which brought ſo great a Revenue every Year to his Majeſty, when the Earl had not been at the leaſt Expence thereupon; and if his Majeſty ſhould not aſſiſt their Pretences with his Royal Authority, they muſt all quit the Plantation, which would be to his Majeſty's great Damage.

Theſe

These being the several Pretences of the several Persons, and nothing being to be done by any Agreement between themselves; their Interests being so distinct and inconsistent with each others, his Majesty thought fit, in the first place, to refer the Consideration of the Legality and Validity of the Patent to his Counsel at Law; who, upon full Deliberation, after the hearing of all Parties, returned their Opinion, That their Patent was void, and that his Majesty might take the same into his own Power. This Report was no sooner made to his Majesty, but that he very graciously declared, he would not from hence receive any Benefit and Advantage to himself, until all their Pretences had received Satisfaction; and that he would make no other Use of avoiding the said Charter, than to dispose the Profits of the Plantation to those who in Justice had any Pretence in Law or Equity to receive the same; and therefore, that the Lord *Willoughby* should proceed in his Voyage to the *Barbadoes*, and should receive according to his Bargain a Moiety of the Profits, and that the other should be disposed of for the Satisfaction of the Debts and other Incumbrances; in order to which, his Majesty appointed the same Committee of the Lords to meet again, and to adjust the several Proportions.

When they met, they had all the Persons concerned present with them, or ready to be called in upon any Occasion; and they all appeared very glad that the King had taken the Care and Protection of the Plantation upon himself, which was all the Security the Planters had or could desire; and the Lords first Care was to make some Computation of what might be depended upon as the yearly Revenue that would arise upon the Imposition within the Island: But the Planters could not be drawn to any particular Agreement in that Point, not so much as to consent to what should be imposed upon every Hundred; but, on the contrary, declared, that too much had been undertaken in that kind by one of their own Number (Mr. *Kendale*) in his Discourse before the King in the Council, and declared that the Plantation could not bear the Imposition he had mentioned; that whatsoever was to be done of this Nature was to be transacted by an Assembly in the Island, and that all that they could promise for themselves was, that they would use their utmost Endeavours with their Friends in the Island, that when the Lord *Willoughby* should arrive there, and call an Assembly, they should consent to as great an Imposition as the Plantation would bear; by which a good Revenue would arise to the King for the Purposes aforesaid.

The Creditors had great Reason to be glad of the Resolution his Majesty had taken; for though it would be a long Time before they could be fully satisfied out of a Moiety of the Profits, though it should arise to the highest Computation; yet in Time they should receive all, and should every Year receive some: Which would lessen their Debt, and relieve those who were in the highest Necessities, of which there was a great Number; whereas they had hitherto, in so many Years, received not one Penny; and it was evident, that without his Majesty's Authority they never should, since the Planters were resolved never to consent to any Imposition, or submit to any Authority that should be exercised under the Earl of *Carlisle*'s Patent without a due Course of Law, the Way to obtain which would be very difficult to find out; and they understood well enough, that without his Majesty's Grace and Bounty to them, the Repeal, or avoiding the Earl of *Carlisle*'s Patent, would put a quick End to all their Pretences.

The greatest Difficulty that did arise was from the Earl of *Kinnoul*, to whom the last Earl of *Carlisle* had devised these Islands by his Will; and he had a great Mind to go thither himself, and take Possession of his Right; and his Counsel had persuaded him, that the King's Charter granted to the first Earl of *Carlisle* was good and valid in Law, and that they believed they could maintain and defend it in any Court of Justice. Then his own Estate in *Scotland* was so totally lost by the Iniquity of the Times, and by his Father's having so frankly declared himself for the King, when very few of that Nation lost any thing by their Loyalty, that he had very little left to support himself; and therefore was willing to retire into any Place abroad, where he might find but a bare Subsistence: But when he considered again, that he could have no Pretence to any thing in the *Barbadoes*, till after all the Creditors were fully satisfied, and how long it was like to be before they could be satisfied, there remaining still due to the Creditors of both kinds no less than Fourscore Thousand Pounds Sterling principal Money, he did not believe that his insisting upon the Patent would be worth the Charge and Hazard he must inevitably be put to; and therefore, upon further Deliberation with his Friends, he willingly referred himself and all his Interest to the King's gracious Determination, as all the rest of the Pretenders and interested Persons had done.

The Case being thus fully stated to the Lords, and every Man's Interest or Pretence clearly appearing to them, they considered seriously amongst themselves what they might reasonably propose to the several Persons, in order to their Agreement amongst themselves; and that proving ineffectual, what Advice they might reasonably give his Majesty. They were unanimously of Opinion, not to advise his Majesty to cause the Patent to be called in Question; for though they doubted not, upon the Opinion of his learned Counsel, that the same would be adjudged void and illegal, yet they did not think it a seasonable Time, when the Nation is so active and industrious in foreign Plantations, that they should see a Charter or Patent questioned, and avoided, after it had been so many Years allowed and countenanced, and under which it had so long flourished, and was almost grown to Perfection; and that since his Majesty had declared, that notwithstanding any Right of his own, all possible Care should be taken for the Satisfaction of the Creditors, as well as for the Preservation and Support of the Plantation, it would be equally equitable and honourable in his Majesty, not to leave the Earl of *Kinnoul* the only Person unconsidered, and bereaved of all his Pretence; but that they would humbly move his Myjesty, that he would graciously vouchsafe to assign some present Maintenance to the said Earl, which his unhappy Condition required, out of the Revenue which should be there settled, and until the Debts should be paid; and that after that Time such an Augmentation might be made to him as his Majesty in his Royal Bounty should think fit; in Consideration whereof the Earl should procure the Patent to be brought in and surrendered: Which he promised should be done accordingly, as soon as the Settlement should be made of that Proportion which should be assigned to him.

That the Lord *Willoughby* should enjoy the Benefit of his former Contract with the Earl of *Carlisle*, and approved by his Majesty, during the Remainder of those Years which are not yet expired; that he should make what Haste he could thither, and call an Assembly, to the end that such an Imposition might be agreed upon to be paid to his Majesty as should be reasonable, in consideration of the great Benefit they had already and should still enjoy, in being continued and secured in their several Plantations, of which as yet they were, as it were, but Tenants at Will, having no other Pretence of Right but the Possession; and therefore, that those Merchants and Planters who had petitioned the King, should, according to their Obligation and Promise made by them to his Majesty, use all their Credit with those in the Island, that the Imposition might arise to such a Proportion that the Revenue might answer the Ends proposed, and that one Moiety of that Revenue should be enjoyed by the Lord *Willoughby* for his Term.

That the Annuity of Three Hundred Pounds a Year should be paid to the Earl of *Marlborough*, according to the original Contract mentioned before; and that the Assignment that his Majesty would likewise be pleased to make to the Earl of *Kinnoul*, should be likewise first paid; and then that the Remainder of that Moiety should be received to the Use of the Creditors; and that when the Lord *Willoughby*'s Term should be expired, his Majesty should be desired, after the Reservation of so much as he should think fit for the Support of his Governor, that all the remainder might be continued towards the Creditors, whilst their just Debts should be paid.

These Particulars appearing reasonable to the Lords, all Persons concerned were called, and the same communicated to them, who appeared all well contented; and thereupon the Lords resolved to present the same to his Majesty, which they did accordingly at the Board, and his Majesty, with a full Approbation and Advice of the whole Council, ratified the same; whereupon that Order was made by his Majesty in Council, which comprehends all the Particulars mentioned before, which was delivered to the Lord *Willoughby*, with his Majesty's express Command, that he should see it punctually and precisely executed; and the like Order was delivered by the Clerk of the Council to every other Person mentioned, who desired the same: To which Order I do for the more Certainty refer myself, being in no Degree confident (having at this Time no other Help than my Memory) that it is set down with that Exactness as it ought to be. As I have throughout his Affair taken very great Pains to reduce it to this particular Agreement, which at that Time seemed to be satisfactory to all the Persons concerned, so I had not the least Temptation of particular Benefit to myself; and I do still believe it to be very just and reasonable, and agreeable to his Majesty's Justice and Goodness, all Circumstances being considered; and though it may be, in Strictness of Law, and by the avoiding the Grant made to the Earl of *Carlisle*, his Majesty might have possessed himself of the whole Island, without any tender Consideration of the Planters or of the Creditors, I am not ashamed that I never gave his Majesty that or the like Counsel, in this or any other Matter of the like Nature; and if I had, I am confident his Majesty would have abhorred it, and not have thought the better of me for giving it.

The other Part of this Article, That I have caused such as complained of the arbitrary Government in the Plantations before the King and Council, to be long imprisoned for so doing, doth refer, I suppose, to the Commitment of one *Farmer*; who being sent over a Prisoner by the Lord *Willoughby*, in a Ship that came from thence, made his Appearance at *Oxford*, his Majesty being then there in the Sickness-Time, which was the first Time I ever heard of the Man, or of the Matter; and at the same Time one of the Secretaries of State received a Letter from the Lord *Willoughby*, which was sent by the same Ship, in which his Lordship had sent a direct, full Charge of Mutiny, Sedition, and Treason against him; and by his Letter informed the Secretary of all the Behaviour and Carriage of the said *Farmer*, with all the Circumstances thereof; and that he had, by his seditious Practices, prevailed so far upon a disaffected Party in that Island, that the Lord *Willoughby* was obliged in the instant to send him aboard the Ship, without which he did apprehend a general Revolt in the Island from his Majesty's Obedience: And the Lord *Willoughby* likewise desired that *Farmer* might not be suffered to return thither before the Island should be reduced to a better Temper. The Man was called in before the King and Council, and the Charge which the Lord *Willoughby* had sent read to him: The greatest Part whereof he could not deny; and in his Discourse upon it behaved himself so peremptorily and insolently before the King, that his Majesty thought it very necessary to commit him, nor did any one Councillor then present appear to think otherwise: And I do confess, that the discharging him from his Imprisonment was some time afterwards moved, and that I was always against his Discharge; being of Opinion that it was impossible for the Lord *Willoughby*, or any other Governor in any of the Plantations, to preserve his Majesty's Right, and support the Government, if he should be so far discountenanced, that a Man sent over by him as a Prisoner, under such a particular and so heinous a Charge, should be upon his Appearance here set at Liberty; but my Opinion was, that he should be sent back a Prisoner thither, that he might be tried by the Law and Justice of the Island, and receive condign Punishment for his Offence. And I cannot deny, but that I am still of the same Opinion; and if it be an Error, it proceeds from the Weakness of my Understanding, which is not in my Power to reform.

What I have here set down, is all that occurs to my Memory with reference to the Island of the *Barbadoes*; which being not particularly mentioned in the Article, but comprehended under the general Expression of his Majesty's foreign Plantations, I take myself obliged to give

give ſome Anſwer, even to that General: And I hope it will not be imputed as a Crime to me, if I have taken more Pains than other Men in that important Service of his Majeſty concerning his foreign Plantations, which I did not think was enough taken to Heart; and if my Deſire and Readineſs to take any Pains, or give any Aſſiſtance to the Advancement of that Service, did induce many Perſons to apply themſelves to me on thoſe Occaſions, I hope it ſhall not be charged upon me as over Activity, or Ambition to ingroſs more Buſineſs into my Hands than I was intitled to; for which I have this Excuſe to make for myſelf, that I found the Pains I took to be acceptable to his Majeſty: And I was ſo far from having any particular Deſign or Advantage to myſelf, that I do profeſs and declare, that from all or any of his Majeſty's foreign Plantations I never had the leaſt Reward, or the leaſt Preſent made to me, except that the now Lord *Willoughby* once told me, that his Brother had ſent over ſome Pieces of the ſpeckled Wood which grows in *Surinam*, with Direction, that if I liked it, I might have what I would of it; whereupon I had ſome Pieces, which I thought might have been applied to the making of Cabinets, or the adorning of Wainſcot; but as they were very ſmall, ſo the Middle of every Piece was wind-ſhaken and rotten, that they could not be applied to any conſiderable Uſe; and except ſome Blocks of Walnut-Tree which the Governor of *Virginia* ſent to me, and of which I made ſome Table-Boards and Frames for Chairs, the Workmanſhip whereof coſt me much more than the Wood was worth: And theſe two Particulars contain all the Rewards and Preſents, or Profit, that ever I received from all his Majeſty's foreign Plantations, or any body, to my Uſe.

The Tenth Article is, *That I did reject and fruſtrate a Propoſal and Undertaking approved by his Majeſty, for the Preſervation of* Nevis *and* St. Chriſtophers, *and reducing the* French *Plantations to his Majeſty's Obedience, after the Commiſſions were drawn for that Purpoſe; which was the Occaſion of ſo great Loſs and Damage in thoſe Parts.*

I never did reject or fruſtrate any ſuch Propoſal or Undertaking, never taking upon me in the leaſt Degree to make a Judgment of Things of that Nature, nor was ever any ſuch Propoſal made to me; but I do very well remember, that his Majeſty himſelf did once deliver to the Council a Paper, which he ſaid one of his Servants, Mr. *Marſh*, had delivered to him, containing ſome Propoſitions for Ships and Men to be ſent by his Majeſty for the Recovery of *St. Chriſtophers*, which had been newly taken by the *French*. Upon the reading of which Paper and Propoſitions, the ſame were referred to the Conſideration of the Lord-General, one of the Secretaries of State, and to the Vice-Chamberlain, as I remember, who were to confer with Mr. *Marſh*, and ſuch others as joined with him; and they were at the ſame Time appointed to conſider of another Propoſition delivered in Writing by the now Lord *Willoughby* and ſome Merchants of *London*, who were Planters in the *Barbadoes*, for the ſupplying and better ſecuring that Iſland, and the reſt of thoſe *Caribbee* Iſlands; and for the reducing and recovering any of them which were or ſhould be taken by the Enemy; upon the latter of which ſomewhat was afterwards done: And if the other concerning *Nevis* and *St. Chriſtophers* was rejected, of which I know nothing, I preſume it was, becauſe it either appeared unpracticable, or not conſiſtent with his Majeſty's other Affairs.

The Eleventh Article is, *That I adviſed and effected the Sale of* Dunkirk *to the* French *King, being Part of his Majeſty's Dominions, together with the Ammunition, Artillery, and all Sorts of Stores there, and for no greater Value than the ſaid Ammunition, Artillery, and Stores were worth.*

It is very well known to his Majeſty, and to ſeveral Perſons yet alive, that the parting with *Dunkirk* was reſolved upon before ever I heard of it; and that the Purpoſe was therefore concealed from me, becauſe it was believed that I was not of that Opinion, and that I would not concur in the Advice. When it was afterwards propoſed and debated, when I was preſent, there likewiſe attending upon his Majeſty and his Royal Highneſs the late Lord Treaſurer, two Secretaries of State, and ſome other of the Lords of the Council; the Reaſons that were given for the parting with it, were, *firſt*, That the Profit which did or could accrue to the Kingdom by keeping it, was very inconſiderable, whether in War or Peace; that by Sea it was very little uſeful, it being no Harbour, nor having Place for our Ships to ride ſafe in; and that if it were in the Hand of the Enemy, it could do us little Prejudice, becauſe three or four Ships might block it up, and keep it from infeſting their Neighbours; and that though heretofore it had been a Place of Licence at Sea, and had much obſtructed Trade by their Men of War, yet that proceeded only from the Unſkilfulneſs of that Time, in applying proper Remedies to it; which was manifeſt by *Cromwell*'s blocking them up, and reſtraining them when he made War upon them, inſomuch as all the Men of War left that Place, and betook themſelves to other Harbours; that it was ſo weak to the Land (notwithſtanding the great Charge his Majeſty had been at in the Fortifications, which were not yet finiſhed), by the Situation and the Soil, that it required as many Men within to defend it, as the Army ſhould conſiſt of that beſieged it; otherwiſe, that it could never hold out and endure a Siege of two Months, as appeared clearly by its having been taken and retaken ſo many Times within the late Years; in all which Times it never held out ſo long, though there was always an Army at no great Diſtance to relieve it. *Secondly*, That the Charge of keeping and maintaining it, without any Accidents from the Attempt of an Enemy, did amount unto above One hundred and twenty thouſand Pounds a Year; which was a Sum the Revenue of the Crown could not ſupport, without leaving many other Particulars of much more Importance unprovided for; and this was not lightly urged, but the State of the Revenue, and the conſtant and indiſpenſible Iſſues were at the ſame Time preſented. *Thirdly*, It could not reaſonably be believed, but that if *Dunkirk* were kept, his Majeſty would be ſhortly involved in a War with one of the two Crowns: The *Spaniſh* Ambaſſador had already demanded the Reſtitution of it in Point of Juſtice, it having been taken from his Maſter by the late Uſurper, in a Time when there was not only a Peace between his Majeſty and the King of *Spain*, but when his Majeſty reſided and was entertained by the Catholick King in *Flanders*; and at the ſame Time, both *France* and *Spain* inhibited their Subjects from paying thoſe ſmall Contributions to the Garriſon at *Dunkirk*, and endeavoured to reſtrain the Governor himſelf from enjoying ſome Privileges which had been always enjoyed by him, from the Time that it was put into *Cromwell*'s Hands; and it was then conceived, that as it would be very hard for the King to preſerve a Neutrality towards both Crowns, even during the Time of the War between them (which Temper was thought very neceſſary for his Majeſty's Affairs), ſo it would be much more difficult long to avoid a War with one of them upon the keeping of *Dunkirk*, if the Peace that was newly made ſhould remain firm and unſhaken. Upon theſe Reaſons, (the major Part whereof were out of my Sphere, and I could only govern myſelf by the Opinion of thoſe who underſtood Matters of that Nature, nor could I anſwer any of the Arguments which have been offered) his Majeſty reſolved to eaſe himſelf of the Burthen of maintaining *Dunkirk*, and to part with it in ſuch a Manner as might be moſt for his Advantage and Benefit. There remained then no other Queſtion, than into what Hand to put it? And the Meaſure of that was only who would give moſt Money for it, there being then no Inclination to prefer one before another. It was enough underſtood, that both Crowns would be very glad to have it, and would probably both make large Offers for it; but it was then as evident, that whatſoever *France* ſhould contract for, the King might be ſure to receive, and the Buſineſs would be ſoon diſpatched; whereas, on the other Hand, it was as notorious, and as evident to his Majeſty, and to all who had any Knowledge of the Court of *Spain*, and of the Scarcity of Money there and in *Flanders*, that how large Offers ſoever the *Spaniard* might make, they could not be able in any Time to pay any conſiderable Sum of Money; and that there would be ſo much Time ſpent in Conſults between *Madrid* and *Bruſſels* before it could be diſpatched, that the keeping it ſo long in his Majeſty's Hands would be an intolerable Burthen to him; beſides that, it ſeemed then probable that the *Spaniard* would ſhortly declare himſelf an Enemy, for beſides that he demanded *Dunkirk* as of right, ſo he likewiſe required the Reſtitution of *Tangier* and *Jamaica* upon the ſame Reaſon, and declared, that without it there could be no laſting Peace between *England* and *Spain*, and refuſed ſo much as to enter upon a Treaty of Alliance with the King, before he would promiſe to make ſuch a Reſtitution. There wanted not in this Conference and Debate the Conſideration of the States of the *United Provinces*, as Perſons like enough to deſire the Poſſeſſion of *Dunkirk*, from whence they had formerly received ſo much Damage, and were like enough to receive more whenever they ſhould be engaged in any War; and if in Truth they had any ſuch Deſire, more Money might reaſonably be required of them, and probably be obtained, than could be expected from either of the Kings. But upon Diſcuſſion of that Point, it did appear to every Man's Reaſon very manifeſt, that though they had rather that *Dunkirk* ſhould be put into the Hand of the *Spaniard* than delivered to *France*, or than it ſhould be detained by the *Engliſh*, yet they durſt not receive it into their own Poſſeſſion; which neither of the Kings would have approved of; and ſo it would have expoſed them to the Diſpleaſure, if not to the Hoſtility of both Crowns. Upon this full Deliberation, his Majeſty inclined rather to give it up to *France* than to *Spain*; but deferred any poſitive Reſolution till he had imparted the Matter to the Council-Board, where the Debate was again reſumed, principally concerning the keeping or the parting with it; in which debate the Memory and Mention of what had been done in the Houſe of Commons heretofore upon that Subject was not omitted, nor the Bill that they had ſent up to the Houſe of Peers for annexing it inſeparably to the Crown; but after a long Debate of the whole Matter, there was not, as I remember, above one Lord of the Council who offered his Advice to his Majeſty againſt his parting with it; and the Ground of that Lord's diſſenting was enough underſtood to have nothing of Publick in it. In concluſion, his Majeſty reſolved, for the Reaſons aforeſaid, to put it into the Hands of *France*, if that King would ſatisfy his Majeſty's Expectation in the Money he would require for it.

Monſieur *D'Eſtrades* came privately over to treat upon it without any Character; but pretending to make it his Way for *Holland*, whither he was deſigned for Ambaſſador. After he had waited upon the King, his Majeſty appointed four or five of the Lords of his Privy-Council (whereof I was required to be one) to treat with Monſieur *D'Eſtrades* upon the Sale of *Dunkirk*; and at that our firſt Conference together, after we had in vain endeavoured to perſuade him to make ſome Offer, we did demand the Sum of ſeven hundred thouſand Pounds Sterling to be paid by the King of *France* for the Delivery of *Dunkirk* and *Mardyke* (which is always underſtood to be included when *Dunkirk* is mentioned) into his Poſſeſſion. Which Sum appeared to him ſo ſtupendous, that he ſeemed to think the Treaty at an end, and reſolved not to make any Offer at all on the Part of the King of *France*; and ſo the Conference broke up. At the next Meeting he offered three Millions of Livres, which, according to the common Account, amounted to three hundred thouſand Piſtoles; which we as much undervalued: So that any further Conference was diſcontinued till he had ſent an Expreſs or two into *France*, and till their Return; and afterwards, upon our inſiſting upon what he thought too much, and his Offer of what we eſteemed too little, the Treaty ſeemed to be at an end, and he preparing for his Return. In concluſion, his Majeſty being fully as deſirous to part with it, as the King of *France* could be to have it, it was agreed and concluded, that upon the Payment of five hundred thouſand Piſtoles in Specie at *Calais* to ſuch Perſons as the King ſhould appoint to receive it, his Majeſty's Garriſon of *Dunkirk* ſhould be withdrawn, and that Place put into the Hands of the King of *France:* All which was executed accordingly; and I believe was a greater Sum of Money than was ever paid at one Payment by any Prince in *Chriſtendom*, upon what Occaſion ſoever. And that all this ſhould not amount to a greater Value than the Ammunition, Artillery, and Stores were worth, which were delivered with it, is very ſtrange, and cannot be ſuppoſed by any reaſonable Computation.

I do very well remember, that in the Treaty we did with much Earneſtneſs and Reſolution inſiſt upon the detaining and tranſporting into *England* the Cannon and other Artillery and Ammunition; but Monſieur *D'Eſtrades* would not conſent to it, it being, as he ſaid, neceſſary for the Defence of the Place, which probably might be attacked by the *Spaniard* within few Days after it ſhould be delivered into the Hands of the *French*; and upon our inſerting that Exception of the Cannon and Ammunition in our Demand, he was at laſt induced to conſent to the Payment of five hundred thouſand Piſtoles, which he had never before yielded unto; and when his Majeſty plainly diſcerned that the King of *France* would in Truth give no more, and had cauſed ſome Eſtimate to be made of the Cannon and Ammunition, the Value whereof, as I remember, was not thought to ariſe to more than twenty thouſand Pounds Sterling, or thereabouts, his Majeſty reſolved to accept what was offered, for which I have not heard that he hath ever ſince been ſorry; and his Majeſty did at the ſame Time reſolve, and poſitively declare, that all the Money which ſhould be received for *Dunkirk*, ſhould be brought to, and depoſited in the Tower of *London*, and no Part of it applied to any ordinary Occaſions, but to be preſerved for ſome preſſing Accident, as an Inſurrection, or the like, which was reaſonably enough apprehended; and I preſume it was all iſſued out in ſuch a Manner, and at ſuch Seaſons, as his Majeſty found neceſſary for his moſt important Affairs; of the Particulars whereof I can ſay nothing. This is all I can ſay concerning the Sale of *Dunkirk*, and of my Part in that Tranſaction: To which I ſhall only add, that I acted that Part in it which I was obliged by my Duty to do, in Obedience to the King's Commands; and that before, or in, or after the Tranſaction, I never received the Value of one Shilling for Reward, or Preſent, or any other Conſideration relating to that Affair; and I believe the Treatment I have received ſince my coming into *France* is an unqueſtionable Evidence that *that* King did never take himſelf to be beholden to me for that, or any other Service, as in Truth he never was.

The Twelfth Article is, *That I did unduly cauſe his Majeſty's Letters Patents under the Great Seal of* England *(to one Dr.* Crowther*) to be altered, and the Inrollment thereof to be unduly razed.*

When I firſt heard of this Charge, I could not comprehend what the Meaning of it was, being moſt aſſured that I had never cauſed any Alteration to be made in any of his Majeſty's Letters Patents under the Great Seal, or the Inrollment thereof to be razed; but upon Enquiry I was informed, that Dr. *Crowther*, who was Chaplain to his Royal Highneſs the Duke of *York*, and had attended upon his Perſon during the whole Time that his Highneſs was beyond the Seas, upon his Majeſty's Return into *England*, had obtained from the King his Royal Preſentation to the Parſonage of *Treddington* in the County of *Worceſter*; which Preſentation, according to Courſe, paſſed under the Great Seal of *England*; that when he brought his Action upon the Preſentation againſt the Intruder, who refuſed to give him Poſſeſſion, and the Record was carried down to the Aſſizes in the Country, when the Doctor's Counſel was to open his Title, and thereupon was to produce the King's Preſentation, they found, upon Peruſal thereof, that either by Miſinformation, or Negligence of the Clerk, inſtead of the County of *Worceſter*, where the Rectory was, the County of *Warwick* was inſerted; upon which Miſtake, the Doctor was neceſſitated to be nonſuited: And thereupon he forthwith made a Journey to *London*, to adviſe with his Counſel, and the moſt experienced Clerks, how to recover the Misfortune that had befallen him, and that his Majeſty's Right might not be deſtroyed by ſuch an Overſight in the Clerk; and it ſeems he was by them adviſed, as the uſual Way in Caſes of that Nature, to petition the King, that in his Majeſty's Preſence, the Preſentation might be mended, and *Worceſter* inſerted inſtead of *Warwick*, and that thereupon the Great Seal might be again affixed to it; all which was done accordingly, as in ſuch Caſes is uſual. And this is all I know of that Affair.

The Thirteenth Article is, *That I have, in an arbitrary Way, examined and drawn into Queſtion divers of his Majeſty's Subjects concerning their Lands, Tenements, Goods and Chattels, and Properties; determined thereof at the Council-Table, and ſtopped Proceedings at Law, and threatened ſome that pleaded the Statute of* 17 Car. I.

I muſt here again lament my own Misfortune, that I am expoſed to publick Reproach under a general odious Charge, without aſſerting any one Particular, to which I might make my Defence: I have therefore no more to ſay, but that I am very innocent as to any Crime laid to my Charge in this Article; and I have been ſo far from examining and drawing into Queſtion any of his Majeſty's Subjects concerning their Lands, Tenements, Goods and Chattels, and Properties, and determining the ſame at the Council-Table, and ſtopping Proceedings at Law, that I do not know or believe that any one Caſe of that Nature hath been ever determined there, at leaſt when I have been preſent; I having always diſcountenanced all ſuch Addreſſes, and procured all Petitions of that Kind to be rejected as often as they have been tendered; and I take myſelf obliged to ſay, for the Vindication of his Majeſty's Honour and Juſtice, that there have not been ſo many Years paſſed ſince the Erection of the Council-Table, with ſo little Diſturbance or Diſquiet to the Subjects concerning their Lands, Tenements, Goods and Chattels, and Properties, as hath been ſince his Majeſty's happy Return, nor hath the ordinary Courſe of Proceeding at Law been leſs obſtructed.

The Fourteenth Article is, *That I did cauſe* Quo Warranto's *to be iſſued out againſt moſt of the Corporations of* England *by Act of Parliament, to the Intent I might receive great Sums of Money from them for renewing their Charters; which when they complied withal, I cauſed the ſaid* Quo Warranto's *to be diſcharged, and Proſecution thereon to ceaſe.*

I never cauſed any *Quo Warranto* to iſſue out againſt any one Corporation in *England*, but by his Majeſty's expreſs Command, or by Order of the Board; which was always upon ſome Miſcarriage or Miſbehaviour in the Corporation: And I do not remember that I ever moved the King againſt any particular Corporation, but that of *Woodſtock*; and which my Duty to his Majeſty obliged me to do, being intruſted by his Majeſty with the Command of his Houſe and Parks there, and being his Majeſty's Steward of his Honour and Manor of *Woodſtock*, upon which the Borough had always depended. His Majeſty having conferred that Charge upon me, I was no ſooner poſſeſſed of it by the Death of the late Earl of *Lindſey*, who enjoyed that Place before, than I received a Petition from ſeveral Inhabitants and Burgeſſes of the Borough of *Woodſtock*, who complained that the Mayor and Juſtices had lately procured their Charter to be renewed, without the Privity or Conſent of the Borough; and that under Pretence of renewing it, they had procured many new Clauſes to be inſerted, and thereby reduced much of the Government, which before depended upon the whole Corporation, into their own Hands; and had thereby likewiſe procured a Piece of Ground, the Benefit whereof did formerly belong to all the Burgeſſes, and was uſually applied to the Relief of ſuch of them who were decayed in their Eſtates, to be now granted to the Mayor, and a ſelect Number of the Juſtices, and the Profits thereof to be at their Diſpoſal, to the great Prejudice of the Borough and the Inhabitants thereof. I referred this Petition to Mr. Juſtice *Morton*, who lived within four or five Miles of *Woodſtock*, and deſired him to examine the Truth of theſe Allegations, and to certify me whether the Complaints were juſt and reaſonable: Whereupon he took the Pains to go over to the Town, and confer with the Mayor and Juſtices, and heard the Allegations of the Petitioners; and upon the whole Matter certified me, that he found ſeveral important Alterations in the new Charter from what had been in the old, and ſome new Conceſſions; and at the ſame Time, Sir *William Fleetwood*, who is Ranger of the Parks, certified me, that ſince the renewing of their Charter, the Mayor and Juſtices were not ſo good Neighbours to his Majeſty's Game, as they had formerly been, and had withdrawn many of thoſe Services which they had uſed to perform; and that when any Treſpaſſes were committed by thoſe of the Borough upon his Majeſty's Woods or Game, which happened very frequently, and Complaint was thereof made to the Mayor and Juſtices, who had the ſole Juriſdiction within the Borough, there was ſo ſlight and perfunctory Examination thereof, that the Proſecutors were wearied out, and no Juſtice could be obtained. It was my Duty to inform his Majeſty of theſe Proceedings, who was much offended thereat, and thereupon gave Directions to his Attorney-General to bring a *Quo Warranto*, and to repeal that Charter which had been ſo unduly procured, and in which his Majeſty had been ſo groſly deceived and abuſed; and I believe there was the leſs Vigour uſed in the Proſecution of that *Quo Warranto*, becauſe the Mayor and Juſtices, for ſome Time, pretended that they would ſurrender the ſaid Charter, and receive a new one in ſuch Manner as his Majeſty thought fit, though they afterwards changed their Mind. And this is the only Charter which I gave Direction for the Proſecution of, to the beſt of my Memory: Nor did I ever give Direction, upon the Receipt of any Money, to diſcharge any *Quo Warranto's*, or cauſe the Proſecution thereupon to ceaſe; nor did I ever receive the leaſt Sum of Money for the granting or renewing any Charter, other than the uſual Fees received for the ſame by the Clerk of the Hannaper, and accompted to the Great Seal; which Fee, as I remember, amounts to thirteen Shillings and four Pence, or thereabouts.

The Fifteenth Article is, *That I procured the Bills of Settlement for* Ireland, *and received great Sums of Money for the ſame, in a moſt corrupt and unlawful Manner.*

I do confeſs, if I have received the leaſt Sum of Money for or upon the paſſing any Bills for the Settlement of *Ireland*, I have done the ſame in a moſt corrupt and unlawful Manner; nor indeed have I been more ſolicitous in procuring any of the ſaid Bills to paſs, or been more concerned in or for the paſſing them (except for his Majeſty's Service, and the Publick Peace), than any other Councillor preſent at thoſe Debates hath been; but becauſe this Aſperſion upon my Honour and my Honeſty hath been by ſo much Induſtry contrived by ſome Men, who very well know my Innocence in that Particular, and may yet have gained Credit with many upon the Confidence of bold Reporters; I do not know a better Way for my own entire Vindication, than to ſet down an entire Relation of all that hath paſſed by my Hand, or with my Privity, with reference to *Ireland*, ſince the Time of his Majeſty's happy Return into *England*. When his Majeſty found, at his coming to *Whitehall*, ſeveral Perſons of Honour and Quality deputed from *Ireland*, to tender the humble Duty, Obedience, and Submiſſion of that Kingdom to his Majeſty's Government and Subjection; the preſent Government of *Ireland*, at that Time, being executed in a Military Way, by thoſe who had the Command of that Part of the Army, which, upon the Revolution in *England*, had declared their Purpoſe and Reſolution to return to his Majeſty's Obedience; and there could not be too much Expedition uſed in ſettling it under thoſe Laws, and that Form of Government it had been formerly accuſtomed to. Every Body remembers the Multiplicity of Buſineſs the King was incumbent to at that Time, being to reduce his Three Kingdoms to that old Order and Form of Government which they might in Juſtice require, and which for ſo many Years had, by the Confuſion of the late Civil War, been diſcontinued; and therefore it will not be much wondered at, that the Settlement of *Ireland* did not proceed with that Expedition as the diſtracted Intereſts of that Kingdom did require.

Within few Days after the King's Arrival at *Whitehall*, the Commiſſioners or Deputies from *Ireland* (for I know not under what other Name or Title to mention them) taking Notice of the Truſt the King then repoſed in me, (a greater Truſt God, and the King well know, than I was in any Degree ambitious of) addreſſed themſelves to me, deſiring that I would receive from them an Information of the preſent State and Condition of that Kingdom; which his Majeſty had likewiſe commanded them to impart to me; and that I would aſſiſt them in procuring his Majeſty's Favour, that as little Time might be loſt as was poſſible, in endeavouring to ſettle and compoſe the diſtracted Condition of that Kingdom: And upon Conference with them, I quickly found that it was in a diſtracted Condition indeed; ſo hopeleſly diſtracted, that I could not comprehend any practicable Way to compoſe it. There had been an Act of Parliament made in the Beginning of

the Rebellion for the Encouragement of Adventurers; that was, to encourage all Persons to bring in Money for the carrying on the War, upon the Assurance of having a Recompence for their Money out of the forfeited Lands of those who were or should be in Rebellion, according to an Estimate of the Values by the said Act of Parliament; in which, for their better Security, there was likewise a Clause, that his Majesty should not grant a Pardon to any of those Rebels: And upon this Invitation many honourable Persons, and others, had brought in great Sums of Money for the carrying on that War, upon the Security aforesaid. But the Rebellion shortly breaking out in *England*, the Persons in Power in both Houses quickly violated that whole Act, by taking the Monies raised, and lent for the Service of *Ireland*, without, and contrary to the Consent of those who lent it, and applying it for the Support of the Rebellion in *England*; and employed those Regiments of Horse and Foot, who were levied for *Ireland*, to serve against the King, under the Command of my Lord of *Essex*, and who did serve under his Command, at the Battle of *Edge-Hill*; where some of them, out of the Detestation of being so betrayed into Rebellion, quitted my Lord *Essex* his Army, and went over to the King. The Service of *Ireland* being thus neglected, and to such a Degree that the Rebels there increased in Number and in Strength, many Persons of Honour in that Nation, who had contained themselves within their Obedience, and were in no Degree privy to the first Insurrection and breaking out into Rebellion, found it now necessary for their own Preservation, to secure themselves in those Towns and Places which were possessed by the Rebels, and so joined with them in their Councils; yet making all the Professions of Duty to the King, and of an impatient Desire to return to their Subjection; which many of them made good afterwards upon the first Opportunity. By this means the Rebels in *Ireland* advanced every Day in Power, and had several Armies in the several Provinces of the Kingdom, much superior in Power to the *English* Forces, whilst they were every Day diminished by their Want of Victuals, Want of Cloaths, and Want of Pay, which the Parliament neglected to supply them with, and the King could not. His late Majesty, after above a Year's Time that the Rebellion in *England* had been prosecuted against him, notwithstanding all Overtures of Accommodation, found it necessary to make a Cessation in *Ireland*; which was after some Years transacted into a Peace, which though it was quickly afterwards most wickedly and perfidiously broken by the *Irish* to their own Destruction, yet many principal Persons of Honour and good Fortune adhered afterwards constantly to the King, without ever swerving from their Allegiance; and such Men believed the full Benefit of that Peace, in being restored to their Estates which did in Justice belong to them, and expected the same accordingly.

After the Murder of his late Majesty, the King that now is receiving an Address from his *Roman Catholick* Subjects in *Ireland*, with great Acknowledgments of their past Crimes and Errors, and of ample Professions of their Duty and Obedience for the Time to come, during the Time of his being in *France*, I sent the Lord Marquis of *Ormond* into *Ireland* as his Lieutenant of that Kingdom, and with Authority to make such Concessions to his *Roman Catholick* Subjects as might unite them to his Obedience; and that thereby such an Union might likewise be made between his *English* and *Irish* Subjects (the Lord *Inchiquin* having reduced the whole Province of *Munster*, and the Army, and Garrisons thereof, to make Profession of Fidelity to their King), that *Dublin* might quickly be recovered, which was the only considerable Place that then continued in Rebellion, and in which there were very many of known Affections to the King, who would quickly have rendered that City to the Lord Lieutenant, if a great Supply from the Parliament, immediately after the Murder of the late King, had not unhappily arrived the very Day or two before the Marquis of *Ormond* marched with his Army to recover *Dublin*; and within very few Weeks after, *Cromwell* himself landed there with a great Army of Horse and Foot, and all Provisions necessary for the Support and Maintenance of it.

It is not necessary in this Place, and upon this Occasion, to mention what befel that unhappy Kingdom after *Cromwell*'s Arrival there; the quick and speedy Reduction of Towns and Garrisons, the dissolving and dismissing of the Troops and Army under the Command of the Lord Lieutenant, and he being forced to withdraw himself out of the Kingdom, and to return into *France*; which, although it proceeded from the miserable and foolish Jealousies of the *Irish*, and then from their Treachery and Perfidiousness, yet those Crimes did not cover the whole Nation; yet there remained still very many Persons of Honour and Quality, who never after were faulty to his Majesty, and therefore expected the Benefit of the last Peace, likewise confirmed by his Majesty that now is, as of Justice belonging to them; and many of this Condition (some whereof had never been in Arms against the Crown, but had faithfully served in his Majesty's Army in *England* during the whole Rebellion) transported themselves to his Majesty beyond the Seas, and many others were taken and put to Death in *Ireland*.

After all Opposition to the Parliament was totally suppressed in *Ireland*, and the Kingdom entirely at their Devotion, they began then to think of executing the Act of Parliament of the Seventeenth Year of the late King, for Satisfaction of the Adventurers: But as they had from the Beginning violated that Act, by the misapplying the Men and the Money, as aforesaid; so they now preferred the gratifying and rewarding, and paying the Arrears due to the Officers and Soldiers, by assigning them liberal Proportions of the Lands which they called forfeited, before they did any Thing for Satisfaction of the Adventurers, except such only who for some other Merit or Interest had a Title to their Favour; and amongst the forfeited Lands they reckoned all that which belonged to the Church, to the Marquis of *Ormond*, the Lord *Inchiquin*, and all those who had adhered to the King, and constantly opposed the Rebels there, as Part, and distributed the same accordingly. So that at this Time, when the Commissioners for that Kingdom attended his Majesty, the Officers and Soldiers of the Army, and some Adventurers, were and had been in quiet Possession for many Years of all the Church-Lands, of all the Marquis of *Ormond*'s Lands, and the Lands of all other his Majesty's faithful Friends and Servants; and yet there remained a general Complaint amongst the Adventurers, that they were in no degree satisfied what was due to them upon their Adventures by the Act of Parliament, and desired the King that they might receive what was their Due.

Cromwell had not exercised such a Severity as to eradicate the whole *Irish* Nation; but had transplanted them with so great Rigour out of the other Provinces into the Province of *Conought*, that there was scarce left one *Irish* Family out of *Conought*, where the Usurper had assigned them severally such Proportions as he thought Recompence enough for the small Possessions he had formerly allowed them out of their own Estates, in those Places where their Fortunes had lain: And to this Transplantation they had been forced to give their Consent, having had nothing in their Election but either to accept these Assignations, or to have nothing to live upon in any other Place. But now, upon his Majesty's Return, as well those Men who had been transplanted thither out of other Provinces, as those upon whose Lands the other were transplanted as forfeited to the State, were now Suitors to the King, that every one might be restored to his own; and that their past Crimes might be expiated by the extreme Sufferings they had sustained for many Years; and that those Men who had been as deep in Rebellion as themselves, and continued much longer, and prospered better in it, might not be gratified and rewarded with their Estates and Fortunes.

Many Persons of Honour and Reputation, as is said before, had repaired to the King whilst he was beyond the Seas, and followed and attended him there; many Regiments had been raised and transported with the Consent and Approbation of *Cromwell*, for the Service of the two Crowns of *France* and *Spain*; and many of those Officers had served his Majesty from the Beginning, and had never been in Rebellion, and upon his Majesty's Command, when he was in *Flanders*, brought their Regiments over thither to serve as he should direct: and as the King had kept Intelligence always with many of his well-affected Subjects in *England* and in *Scotland*, so he had likewise done with some in *Ireland*, to the End that they might be ready to make use of the first Opportunity that should be offered by any Divisions in the Army, or other Conjunctures, to join with those who were most forward to advance the King's Restitution; which many considerable Men there had promised to do, and in such Seasons could have rendered themselves very useful; and all these Men had some Pretence to the King's Favour, and an Expectation to be restored, at least, to some Part of their Estates.

This was the perplexed Estate of that Kingdom when the King returned into *England*, and when these Commissioners attended upon his Majesty, and conferred with me; when I protested to them that there were so many Intricacies in the Business, and the whole Kingdom involved in so many contradictory Titles and Interests, that I knew not what Counsel to give, or what to propose; but that I would in publick Council give the best Advice and Assistance I could for the settling that Kingdom, when they should make any such Propositions to his Majesty as were practicable. That which was first to be done, and which could only make all other Expedients to be practicable, was the settling the Government in such a Form, and by such Rules, as the Kingdom had been accustomed to before the Troubles; and that the Course and Courts of Justice might be opened. Then the Commissioners themselves proposed, as the first Work incumbent upon his Majesty, in Piety, Honour and Justice, that all such to whom the Lands of the Church, the Lands of the Marquis of *Ormond*, and of all his Majesty's Friends who had been faithful to him, should be forthwith removed, that the right Owners might immediately be put in Possession of what in Right belonged to them; which was the more easily to be done, because much of those Lands remained undisposed of, and reserved for *Cromwell* himself, and much of the rest had been assigned to those Officers who had been the King's Murtherers; and so those Lands were free from all other Title or Pretence, but what the King himself could make to them. But then there was some Caution and Order to be observed; first to assign other Recompence to such who were possessed (how erroneously soever) of any Lands, either as Adventurers upon the Statute, or as Soldiers, for the just Arrears of their Pay; and his Majesty had declared before his coming into *England*, there should be Satisfaction given to all such Persons; and the Truth is, the whole Kingdom of *Ireland* was at that Time so much possessed by the Adventurers and Soldiers, that it was thought very necessary in Point of Prudence, to remove none out of Possession of what had been formerly assigned to them, and according to the Rules of that Time, until some other Lands were assigned to them, which was not difficult to be done. Then the Commissioners, discerning how much his Majesty was concerned for many of those who had served him beyond the Seas, and for others who claimed the Benefit of the first and second Treaty, undertook that his Majesty should not be pressed in any of those Particulars, but that all such Persons should be preserved, and their Estates secured; and thereupon a Preamble was prepared, containing those Provisions which were approved by the Commissioners, who undertook to have such a Bill transmitted as might be the Foundation for a good Settlement, and in which his Majesty might make such Alterations as he did think fit.

There were more Difficulties appeared in settling the Government than were at first apprehended; and nothing was so necessary as sending over the King's Commission, which might determine all other Authorities of Committees and Officers, in which Men had been invested by a Common Consent, or rather by the Prevalence of a Party, which already grew into Factions and Contestations. The General who had contributed so much to the King's Restoration, and appeared very zealous for the Advancement of his Service, had been by the Parliament and Council of State (as they called them) declared and created General of all the Forces in the three Kingdoms; and so his Orders had been obeyed, as well in *Scotland* and *Ireland*, as in *England*, before his Majesty's Return; and the King did not think fit in any degree to lessen his Trust and Authority, nor had the General any Inclination to part with his Power in *Ireland*, where he had procured a great Estate, and could best secure it under his own Authority; and yet he resolved not to go thither, and indeed his Presence then, about the King, was thought very necessary. Hereupon the King declared

clared, that he would make the Lord *Robarts* Deputy of *Ireland*; who was willing to receive that Charge, knowing, at the ſame Time, that the Duke of *Albemarle* was to continue Lieutenant of that Kingdom. But there quickly aroſe ſuch Differences between the General and the Lord *Robarts*, about the drawing their Commiſſions, the latter being ſo ſcrupulous and nice in having the leaſt Dependance upon the General, though Lord Lieutenant; and his Pride and Moroſity was ſuch towards the Commiſſioners of *Ireland*, that they withdrew themſelves from giving him further Attendance and Information; ſo that his Majeſty quickly diſcerned, that though he was a Man of great Parts and Knowledge, yet his Nature and Temper was not fit for that Employment, and therefore reſolved for the preſent to put the Government into the Hands of three Lords Juſtices, the Lord Chancellor of that Kingdom, the Earl of *Montroth*, and the Earl of *Orrery*, who might begin to reduce the Government into ſome Order, until his Majeſty could take a further Reſolution for the Eſtabliſhment of it.

As ſoon as a Bill was tranſmitted, according to the uſual Courſe, to his Majeſty, for the Settlement of *Ireland*, with ſuch a Preamble as is before mentioned, though the Body of the Bill did not in Truth correſpond with it; his Majeſty gave Direction, that it ſhould be ſhewed and expoſed to thoſe of the ſeveral Intereſts, even to the *Iriſh* themſelves, who were the moſt like to receive Prejudice from it: And after a ſufficient Time allowed for every Man's Conſideration, his Majeſty appointed a Time to have it read at the Board, and to hear what Objections could be made againſt it. The great Debate then was upon the Pretences of the *Iriſh*, who appeared with marvellous Confidence, and complained, that by that Act then prepared, and under Conſideration, the whole *Iriſh* Nation would be extirpated, all their eſtates being thereby taken from them. As the preſent Government in *Ireland*, which had declared for the King, had ſent over Commiſſioners or Deputies to attend his Majeſty, and know his Pleaſure, as is mentioned before; ſo the Body of Adventurers had likewiſe choſen ſome Perſons to preſent their Grievances and Deſires: and the *Iriſh*, under the Names of the *Roman Catholicks* of *Ireland*, had likewiſe choſen others to appear on their Behalf, whereof ſome were Lawyers and Men of good Parts, who well knew all the Tranſactions in *Ireland*, from the Beginning of the Rebellion, throughout all the Changes of Government: The chiefeſt Arguments they urged for themſelves were, *Firſt*, Their long and great Sufferings; the Loſs of their Eſtates for Five or Six-and-Twenty Years; the waſting and ſpending of the whole Nation in Battles, and in Tranſportation of Men into the Parts beyond the Seas; whither, as I remember, they reckoned above Twenty Thouſand Men to be tranſported out of that Kingdom in Four or Five Years; the great Numbers which had been executed and maſſacred after his Majeſty's Government had been forced from thence; the great Numbers which had periſhed by Famine and the Plague; thoſe two great Judgments having raged over the Kingdom for two or three Years; and at laſt the tranſplanting the ſmall Remainder of the Nation into one Corner of the Province of *Conought*, where yet much of the Land was taken from them, which had been aſſigned to them with all thoſe Formalities of Law which were practiſed under that Government. *Secondly*, They demanded the Benefit of the two Treaties of Peace; the one in the late King's Time, and the other confirmed by his Majeſty that now is; by both which they ſtand indemnified for all Acts done by them in the Rebellion; and inſiſted upon their Innocence ſince that Time, and that they had purſued all Ways that were in their Power to manifeſt their Affection to his Majeſty, and ſo entire an Obedience to his Commands whilſt he was beyond the Seas, that they betook themſelves to, and withdrew themſelves from, the Service of *France* or *Spain*, in ſuch Manner as his Majeſty ſignified was his Pleaſure they ſhould do. *Thirdly*, They urged, and forced, with a little more Liberty and Indiſcretion than became them in that Conjuncture, the Unworthineſs and Incapacity of thoſe who for ſo many Years had poſſeſſed themſelves of their Eſtates, and ſought now a Confirmation of their rebellious Title from his Majeſty: That their Rebellion had been more infamous, and of a greater Magnitude than that of the *Iriſh*; who had riſen in Arms to free themſelves from the Rigour and Severity that was exerciſed upon them by ſome of the King's Miniſters, and for the Liberty of their Conſcience and Practice of their Religion, without having the leaſt Intention or Thought of withdrawing themſelves from his Majeſty's Obedience, or declining his Majeſty's Government: Whereas, the others had carried on an odious Rebellion againſt his Majeſty's Sacred Perſon, whom they had horridly murthered in the Sight of the Sun, with all imaginable Circumſtances of Contempt and Defiance, and as much as in them lay, had rooted out Monarchy itſelf, and overturned and deſtroyed the whole Government of Church and State; and therefore that whatever Puniſhment the poor *Iriſh* had deſerved for their former Tranſgreſſions, which they have ſo long ſince repented of, and departed from the Rebellion when they had Armies and ſtrong Towns in their Hands, and put themſelves again under his Majeſty's Protection; this Part of the *Engliſh*, who were poſſeſſed of their Eſtates, had broken all their Obligations to God and the King, and ſo could not merit to be gratified with their Ruin and total Deſtruction: That it was too evident and notorious to the World, that his Majeſty's Three Kingdoms had been very faulty to him, and withdrawn themſelves from his Government, by which he had been compell'd to live in Exile ſo many Years; and yet, that upon their Return to their Duty and Obedience, his Majeſty had been graciouſly pleaſed to grant a free and general Pardon, and Act of Indemnity, in which many were comprehended who had in truth been the Contrivers and Fomenters of all the Miſery and Deſolation which had involved the Three Nations for ſo many Years; and therefore they hoped, that when all his Majeſty's other Subjects (as criminal at leaſt as the others) were, by his Majeſty's Clemency, reſtored to their own Eſtates which they had forfeited, were in full Peace, and Mirth and Joy, the poor *Iriſh* alone ſhould not be totally exempt from all his Majeſty's Grace, and left in Tears and Mourning, and Lamentation, and be ſacrificed without Redemption to the Avarice and Cruelty of thoſe, who had not only ſpoiled and oppreſs'd them, but had done all that was in their Power, and with all the Inſolency imaginable, to deſtroy his Majeſty himſelf, and his Poſterity, and who now return to their Obedience, and ſubmitted to his Government, when they were no longer able to oppoſe it; nor did they yet return to it with that Joy and Alacrity, and Reſignation as the *Iriſh* did, and deſired to do: And ſo concluded with thoſe pathetical Applications and Appeals to his Majeſty, as Men well verſed in Diſcourſes of that Nature are accuſtom'd to do.

This Diſcourſe carried on, and urged with more Paſſion, Vehemence and Indiſcretion, than was ſuitable to the Condition they were in; and in which, and the Exceſſes of their Rhetorick, they had let fall many Expreſſions very indecent and unwarrantable, and in ſome of them confidently excuſed, if not juſtified their firſt Entrance into Rebellion, (the moſt barbarous, certainly, and unexcuſable, that any Chriſtians have been engaged in, in any Age,) they irreconciled themſelves to many who had Campaſſion enough for them, and gave their immediate Adverſaries (who ſtood upon the advantage Ground) both Provocation and Opportunity to ſay many Things to their Reproach, which probably would elſe have been forborne. They enlarged upon all the odious Circumſtances of the firſt Year's Rebellion, the murthering of above a Hundred Thouſand Perſons in cold Blood, and with all the Barbarity imaginable; which Murthers and Barbarities had been always excepted from Pardon: And they told them, that if there were not ſome amongſt themſelves that then appeared, they were ſure there would be many found amongſt thoſe for whom they appeared, who would be found guilty of thoſe odious Crimes, which were excluded from any Benefit by thoſe Treaties. And ſo that firſt Agitation before his Majeſty vented itſelf in ſo much Bitterneſs and Animoſity on both Sides, that his Majeſty thought it beſt to conclude it with ſuch Reprehenſions and Animadverſions, as might diſpoſe them to a better Temper when they ſhould be next admitted to his Majeſty's Preſence.

At their next Attendance upon his Majeſty, which was within few Days after, the Commiſſioners for the Proteſtants, taking Notice of what the other Party had alledged for their Defence, the Pretence they had to the two Acts of Pacification, and their extolling their own Innocence from that Time, and their great Affection for his Majeſty's Service, declared, that whatever legal Title the Adventurers had to the Lands they were in Poſſeſſion of, many of whom had always faithfully ſerved the King; yet they would be content, that all thoſe who had in Truth preſerved their Integrity towards his Majeſty from the Time of either or both the Pacifications, and not ſwerved afterwards from their Allegiance, ſhould partake of his Majeſty's Grace, and Royal Bounty, in ſuch a Manner, and to ſuch a Degree, as his Majeſty thought fit to exerciſe towards them: But they were confident they ſhould make it appear, that their Pretences to that Grace and Favour were not founded upon any reaſonable Title; that they had never conſented to any one Act of Pacification, to which the Indemnity had been annexed, which they had not violated and broken within Ten Days after, and then returned to all their Acts of Diſloyalty and Rebellion; that after the firſt Act of Pacification, ratified by the laſt King, in very few Days after they treated the Herald, his Majeſty's Officer, who came to proclaim that Peace, with all manner of Indignity, tearing his Coat of Arms (the King's Arms) from off his Back, and beat and wounded him ſo, that he was hardly reſcued from the Loſs of his Life; that about the ſame time they endeavoured to ſurpriſe and murther the Lord Lieutenant, and purſued him to *Dublin*, which they forthwith beſieged with their Army, under the Command of that General who had ſigned the Peace; they impriſoned their Commiſſioners who were authorized by them, for conſenting to thoſe Articles which themſelves had confirm'd, and ſo proſecuted the War with as much Aſperity as ever; and refuſed to give that Aid and Aſſiſtance they were obliged to, for the Recovery and Reſtoration of his late Majeſty, who was then in Priſon at the Iſle of *Wight*; the Promiſe and Expectation of which Supply and Aſſiſtance, was the ſole Ground and Conſideration of that Treaty, and of the Conceſſions therein made to them; that they thereupon renounced their Obedience to his Majeſty, and put themſelves under the Protection and Diſpoſal of *Rinucceni*, the Pope's Nuncio, whom they made their Generaliſſimo of all their Armies, their Admiral at Sea, and to preſide in all their Councils. After their Diviſions amongſt themſelves, and the Burthen of the Tyranny they ſuffered under, had diſpoſed them to petition this King, who was then in *France*, to receive them into his Protection, and to ſend the Marquis of *Ormond* over again into *Ireland* to command them; and his Majeſty was ſo far prevailed with, as to ſend the Marquis of *Ormond* into *Munſter*, with ſuch a Supply of Arms and Ammunition as he could procure; where the Lord *Inchiquin*, Lord Preſident of that Province, with the Proteſtant Army, received and joined with him; and ſhortly after, the Confederate *Iriſh* made that ſecond Treaty of Pacification, of which they now likewiſe demanded the Benefit: But that it is notoriouſly known, that they no ſooner made that Treaty than they broke it, in not bringing in thoſe Supplies of Men and Money which they were obliged to do, and the Want whereof expoſed the Lord Lieutenant to many Difficulties; and he had no ſooner undergone the firſt Misfortune before *Dublin*, than they withdrew from taking any further Care of the Kingdom, raiſed Scandals upon, and Jealouſies of the whole Body of the *Engliſh*; who, being ſo provoked, would no longer venture themſelves in any Action or Conjunction with the *Iriſh*. They cauſed an Aſſembly or Convention of the Clergy to meet without the Lord Lieutenant's Authority, and put the Government of all Things into their Hands; who, in a ſhort Time, improved the Jealouſy in the Minds of the People towards the few Proteſtants who yet remained in the Army, and who had ſerved the King with all imaginable Courage and Fidelity, from the very firſt Hour of the Rebellion in the Three Kingdoms, to that degree, that the Marquis was even compell'd to diſcharge his own Troop of Guards of Horſe, conſiſting of ſuch Officers and Gentlemen as are mentioned before; and to truſt himſelf, and all the remaining Towns and Garriſons, to the Fidelity of the *Iriſh*; proteſting, that upon ſuch a Con-

Confidence the whole Nation would be united, as one Man, to his Majesty's Service, under the Command of the said Marquis: But they had no sooner received Satisfaction in that Particular, (which was not in the Marquis's Power to refuse to give them) but that they raised several Calumnies against the Marquis himself, and declaimed against his Religion, and inhibited the People upon Pain of Excommunication, not to submit to this or that Order enjoined by the Marquis; and, upon the Matter, inhibited any Obedience they paid to him: Instead of raising new Forces, those that were raised run from their Colours and dispersed themselves; they who were trusted with the keeping of Towns and Forts, either gave them up by Treachery to *Cromwell*, or lost them through Cowardice to him upon very feeble Attacks: Their Great General *Owen O Neile* had made a formal Contract and Stipulation with the Parliament; and in the End, when they had divested the Marquis of all Power to oppose the Enemy, and gave him great Cause to believe his Person to be in great Danger to be betrayed, and delivered up to the Enemy, they vouchsafed to petition him to depart out of the Kingdom, which they could easily compel him to do; and that he would leave his Majesty's Authority in the Hands of one of his Majesty's *Roman Catholick* Subjects, to whom they promised to submit with the most punctual Obedience. Whereupon the Marquis, finding that he could not unite them in any one Action worthy of the Duty of good Subjects, or of prudent Men towards their own Preservation; and so, that his Residence amongst them longer could in no Degree contribute to his Majesty's Service or Honour; and that they would make it be believed that if he would have committed the Command into the Hands of a *Roman Catholick*, they would have been able to have preserved those Towns which still remained in their Possession, which were *Limerick* and *Galloway*, and some other Places of less Importance; and likewise by Degrees recover from the Enemy what had been lost; which was very possible for them to have done, having great Bodies of Men to perform any Enterprize, and some good Officers to lead them, if they would have been obedient to any Command: Whereupon the Marquis had resolved to gratify them, in placing the Command in such a Person's Hand, whose Zeal for the Catholick Religion was unquestionable, and whose Fidelity to the King, and entire Affection, was unblemished; and so made Choice of the Marquis of *Clanrickard*, a Name, tho' of an *English* Extraction, had for so many Hundred Years resided in that Kingdom, and had the greatest Fortune amongst them, that he had the Reputation of being of the best Family of the *Irish*, and whose Family had, in all former Rebellions, as well as in this, preserved their Loyalty unspotted to the Crown. The *Roman Catholicks* of all Kinds pretended at least a wonderful Joy at this Election, acknowledged it a great Obligation to the Lord Lieutenant for making it, and applied themselves to the other with all Protestations of Duty and Submission, to induce him to accept the Charge, who indeed knew them too well to be willing to trust them; yet upon the Marquis of *Ormond*'s earnest and solemn Intreaty, and out of his great Zeal for his Majesty's Service, and to support his Government there, until his Majesty could procure other Supplies, or give better Orders for the doing it, he was contented to receive such Commissions from the Lord Lieutenant, as were necessary for the Execution of that Command, and Preservation of the Government. Upon which the Marquis of *Ormond* embarked himself, with some few Friends and Servants, upon a little Pink that was bound for *France*, where he arrived safely about the Time that his Majesty transported himself thither, after his miraculous Escape from *Worcester*.

The Lord Lieutenant was no sooner gone, but that the Marquis of *Clanrickard*, the new Lord Deputy, found himself no better treated than the Lord of *Ormond* had been: That Part of the Clergy which had continually opposed the Lord Lieutenant for being a Protestant, were now as little satisfied with the Deputy's Religion, and as violently opposed all his Desires, and violated their own Promises, and quickly made it evident, that his Affection and Loyalty to the King was that which they disliked, and a Crime that could not be weighed down by the undoubted Sincerity of his Religion. They entered into secret Correspondence with the Enemy, and Conspiracies between themselves; and though there were some Persons of Honour and Quality with the Deputy, who were very faithful to him and to the King, yet there were so many about him of another Allay, that all his Councils, Resolutions, and Designs, were soon enough discovered to the Enemy to be prevented; and though some of the Letters were intercepted, and the Persons discovered who gave the Intelligence, he had not Power enough to bring them to Justice; but being commonly Friars and Clergymen, the Privilege of the Church was presently insisted upon, and so they were rescued from the secular Prosecution till their Escape was contrived. That perfidious and treacherous Party had so great an Interest in all the Towns, Forts, and Garrisons, which yet pretended to be subject to the Deputy, that all his Orders were still contradicted or neglected; and the Enemy no sooner appeared before any Place, but some Faction in the Town caused it to be delivered up and rendered. Nor could this fatal Sottishness be reformed even by the Severity and Rigour which the *English* exercised upon them; who, by the wonderful Judgment of God Almighty, always executed those Men who put themselves and the Towns into their Hands, finding them to have had some barbarous Part in the foul Murders which had been committed in the Beginning of the Rebellion, and who had been, by all the Acts of Grace granted by the several Powers, still reserved for Justice: And of this Kind there were so many Instances in and about *Limerick* and *Galloway*, that they deserved to be collected and mentioned in a Discourse by itself, to observe and magnify the wonderful Providence of God Almighty, in bringing heinous Crimes to Light and Punishment in this World, by Means unapprehended by the Guilty; insomuch, as there was scarce a Person of the Clergy or Laity, who had *had* a single Hand in the contriving and fomenting the first Rebellion, and in the Perpetration of those horrible Murders, who had obstructed all Overtures towards Peace, and caused Peace to be broken as soon as made; who had adhered to the Nuncio, and endeavoured most maliciously to exclude the King and his Royal Posterity from the Dominions of *Ireland*; I say, there was scarce a Man very notorious, and eminent in Transgressions of this Kind, who did not by some Act of Treachery first endeavour to merit from the *English*, and by that, or by some other Means, fell into their Hands, and were by them publickly and reproachfully executed and put to Death.

This being the sad Condition the Lord Deputy was in, and the *Irish* Party having without his Leave, and against his express Command, taken upon them to send Messengers into *Flanders*, to desire the Duke of *Lorrain* to take them into his Protection, offering to deliver several important Places and Sea-Towns into his Possession, and to become his Subjects; upon which Invitation the Duke sent over an Ambassador and a good Sum of Money for their present Relief; the Deputy was in a short time reduced to those Straits, that he durst not remain in any Town, nor even in his own House for three Days together, but was forced for his Security to shift from Place to Place, and sometimes to lodge in the Woods and Fields in cold and wet Nights, by which he contracted those Infirmities and Diseases which shortly after brought him to his Grave; and, in the End, he was compelled to accept a Pass from the *English*, who had a Reverence to his Person and unspotted Reputation, to transport himself into *England*, where his Wife and Family were, and where he died before he could procure Means to carry himself to the King, which he always intended to do.

When the *English* Commissioners had enlarged themselves with some Commotion in this Narration and Discourse, they again provoked the *Irish* Commissioners to nominate one Person amongst themselves, or those for whom they appeared, who they believed could in Justice demand his Majesty's Favour; and if they could not make it evidently appear, that he had forfeited all his Title to Pardon after the Treaties, and that he had again been as faulty to the King as before, they would be very willing he should be made the Object of the King's Grace and Bounty, and be restored to his Estate. And then applying themselves to his Majesty, with great Duty and Submission, they concluded, that if any Persons had, by their subsequent or secret Services, or by their Attendance upon his Majesty, rendered themselves grateful to him, and worthy of his Royal Favour, they were very willing that his Majesty should restore all, or any of them to their Honours and Estates, in such Manner as his Majesty in his Wisdom should think fit, and against all Impediments whatsoever. And hereupon several Acts of Parliament were passed, for the Indemnity and the restoring several Persons of Honour and Interest to their Estates; who either in Justice could require the same, as having been always faithful to the Crown, and suffered with it, and for it; or who had so manifested their Affection and Duty for his Majesty, that he thought fit in that Consideration to wipe out the Memory of whatsoever had been formerly done amiss: And by this Means many were in a short Time put into a full Possession of their Estates, to which they could make a good Pretence at the Time when the Rebellion begun.

The Consideration and Debate about the Settlement of *Ireland*, upon the Bill proposed, took up very many Days, his Majesty being always present, and in which there arose every Day new Difficulties. It appeared plainly enough, that the Guilt was so general, that if the Letter of the Act of Parliament of the Seventeenth Year of the late King were strictly pursued, almost an Extirpation of the whole Nation would follow, and which at best would be very miserable. Then the Transplantation into *Conought* had been acted, and finished so many Years before (which was very prudently done in Point of Government, in respect of the unsteady Humour of that People, and their natural Inclination to rebel, if the same had been executed by any Rules of Justice), and the Soldiers and Adventurers had been likewise so many Years in the Possession of their Lots, and had laid out so much Money in building and planting, that if his Majesty had reviewed all that had been done, and taken those Advantages upon former Miscarriages and Misapplications as in Law he might have done, the whole Foundations upon which all the Hopes rested of preserving that Kingdom within their Obedience to the Crown of *England* must have been shaken, and even dissolved. And then the Memory of the Beginning of the Rebellion in *Ireland* (how many other Rebellions soever had followed it, as bad or worse in respect of the Consequences that attended them) was as fresh and as odious to the whole People of *England*, as it had been the first Year; and the whole Nation upon the Matter (though there were many Persons of it of great Honour and Virtue) was fallen into that Contempt, that they seemed indeed in the Eyes of *Christendom* worthy of the miserable Fate they were reduced to: And no Doubt it was a Consideration that reasonably made them thought less worthy of extraordinary Favour and Compassion, that when both the other Nations had made many noble Attempts for redeeming their Liberty, and for the Restoration of his Majesty (for *Scotland* itself had done much towards it), and his present Restoration was, by God's Blessing, and only with his Blessing, the sole Effect of the Courage and Affection of his own Subjects; so that *England* and *Scotland* had in a great Degree redeemed, and even undone what had before been done amiss; and his Majesty had approved and secured those Affections to them, by those Promises and Concessions which he was in Justice obliged to perform: But the miserable *Irish* alone had no Part in the Benefit his Majesty had received, nor had God suffered them to be the least Instruments in bringing his good Pleasure to pass, or to give any Testimony of their Repentance for the Wickedness they had wrought, or of their Resolutions to be better Subjects for the future; so that they seemed as a People left out and exempted from any Benefit from that blessed Conjuncture in his Majesty's Restitution: And this Disadvantage was improved towards them by their frequent Manifestation of an inveterate Animosity against the *English* Nation and *English* Government; which again was recompenced to them by an irreconcileable Jealousy of all the *English* towards them; declaring plainly, that they could be no longer secure of any thing they had, or should have in *Ireland*, than it should evidently appear that it was not in the Power of the *Irish* to take it from them; and to this Conclusion their present Confidence and Impudence contributed very much: And it appeared plainly enough, that they expected the same Concessions (which the Necessity of that Time had made fit to be granted to them) in respect of their

their Religion, and Liberty of Conſcience, as they called it, ſhould be now likewiſe confirmed, without which all other Graces would not be ſufficient to contain them within the Limits of Subjection. This State and Condition of Affairs, and the Temper of the People, made it very neceſſary to the King to be very wary in diſpenſing his ordinary Favours (which his natural, merciful Inclination prompted him to) to the *Iriſh*, and in the Alterations which Juſtice obliged him to make in that Kingdom, that the Manner of it ſhould make it appear, that it was the particular Juſtice in a particular Caſe, which could not be attended with a Conſequence prejudicial to any general Intereſt.

There appeared in this Debate an Intention in the Soldiers and Adventurers, which was to have great Countenance and Approbation in the Bill now under Examination, to deſtroy all Intails and Settlements at Law upon Conſideration of Marriage, or any other Contracts which had been made before the Rebellion; nor had there been in the whole former Proceedings, in the Time of the Uſurpation, any Conſideration taken of Mortgages or Debts due by Statute or Recognizance, or upon any other Security; ſo that all ſuch Debts muſt be either loſt to the Proprietors, or remain ſtill with the Intereſt upon the Land, whoſoever had enjoyed the Benefit or the Profit thereof: All which ſeemed very unreaſonable and unjuſt; and that ſuch Eſtates ſhould remain forfeited by the Treaſon of the Father, who had been only Tenant for Life, againſt all Deſcents and legal Titles of Innocent Children, and of which in all legal Attainders the Crown never had or could receive any Benefit. Yet, how unreaſonable ſoever theſe Pretences appeared to be, the Rules and Directions for the Remedy thereof were not very eaſy; the *Engliſh* declaring, that if ſuch Titles were preſerved and allowed to be good, there would not in that univerſal Guilt which upon the Matter comprehended and covered the whole *Iriſh* Nation, there would not be one Eſtate forfeited for Treaſon, but Intails and other uſeful Conveyances would be forged to defend and ſecure the ſame; nor would there be Witneſſes wanting to juſtify and prove whatſoever their Evidence could be applied to: And if thoſe Trials were to be by the known Rules and Cuſtoms of the Law in Caſes of the like Nature, there was too much Reaſon to ſuſpect and fear that there would be little Juſtice done, ſince a Jury of *Iriſh* would be ſure to find againſt the *Engliſh*; and there was as much Reaſon to apprehend that the *Engliſh* would bring in their Verdict againſt the *Iriſh*, let the Evidence on either Side be what it would. However, the King was in no degree inclined, upon any Suggeſtions, to countenance ſuch a barefaced Violation of the Law by any Declaration in the Act; and after many Alterations and Amendments, and there remaining ſtill ſo many Difficulties and Intricacies, he foreſaw that all Matters were not yet ſo clearly ſtated, that the Settlement could be made by this Bill; but that ſuch Preparations might be made towards it, and ſuch Examinations taken, and ſome Particulars ſettled and adjuſted, and what remained ſtated with more Clearneſs for his Majeſty's Determination, he paſſed the firſt Act of Parliament, and committed the Execution thereof to too many Commiſſioners, nominated to his Majeſty by thoſe who were moſt converſant in the Affairs of *Ireland*; none, or very few of which were known to his Majeſty, or to any of thoſe who had been ſo many Years from their Country, in their conſtant Attendance upon his Majeſty's Perſon beyond the Seas. And upon this Concluſion, and this Diſpatch, the Commiſſioners from *Ireland* of all Kinds returned thither, the Earl of *Orrery* being one of the three Juſtices who were entruſted with the Government.

After a Year ſpent in the Execution of this Commiſſion, there was very little done towards the ſettling the Kingdom; but, on the contrary, the Breaches were made wider, and ſo much Paſſion and Injuſtice ſhewed, that Complaints were brought to his Majeſty from all Parts of the Kingdom, and from all Perſons in Authority. The Number of the Commiſſioners were ſo great, and their Intereſt ſo different, that they made no Diſpatch; very many of them were in Poſſeſſion of thoſe Lands which others ſued for, and bought the broken Titles and Pretences of others for inconſiderable Sums of Money, which they ſupported and made good by their own Authority; and thoſe Men, who had their own particular Concernment chiefly to maintain, attended the Service very diligently: The few who were more indifferent, by having no Intereſt of their own at ſtake, were weary of their Attendance and Expence (there being no Allowance for their Pains), and offended at the Partiality and Injuſtice they ſaw practiſed, withdrew themſelves, and would be no longer preſent at thoſe Tranſactions, which they could not regulate or reform: All Intereſts were equally offended and incenſed; and the Soldiers and Adventurers complained no leſs of the Corruption and Injuſtice than the *Iriſh* did; ſo that the Lords Juſtices and Council found it neceſſary to tranſmit another Bill to his Majeſty, which, as I remember, they called an Explanatory Bill of the former; by which they had provided, That no Perſon who lived in *Ireland*, or had any Pretence to an Eſtate there, ſhould be employed as a Commiſſioner: but that his Majeſty ſhould be deſired to ſend over a competent Number of well-qualified Perſons out of *England* to attend that Service; upon whom a fit Salary ſhould be ſettled by the Bill, and ſuch Rules ſet down as might direct and govern the Manner of their Proceedings; an Oath being likewiſe included in the Bill which the Commiſſioners were to take for the impartial Adminiſtration of Juſtice. And for the Proſecution of this new tranſmitted Act, ſeveral Perſons were ſent over to attend, and inform his Majeſty and the Council upon any Difficulties or Scruples that might ariſe upon the ſeveral Claims and Pretences which were made.

The ſecond Act took as much Time as the former; all that had been ſaid in the former Debates being again repeated, and almoſt with the ſame Paſſion and Impertinence; the *Iriſh* making large Obſervations upon the Proceedings of the late Commiſſioners, to juſtify thoſe Fears and Apprehenſions they had formerly urged. And there is too much Reaſon to believe, that their greateſt Deſign now was rather to keep off any Settlement, than that they hoped to procure ſuch a one as they deſired; relying more to find their Account from a general Diſſatisfaction, and the Diſtraction and Confuſion which was like to attend it, than from any Determination that was like to be given in their Favour: Which yet they did not deſpair of, as well by ſome Promiſes their Friends at Court had made to them, upon great Promiſes made firſt by them, as well as for the Prejudice they found was generally conceived againſt ſome of the Soldiers, and many of the Adventurers, who were like to gain moſt upon the Diviſion. And though the *Iriſh* were in general Dread and Deteſtation for the Reaſons aforeſaid; yet there were many particular Men, both of the Soldiers and Adventurers, who, in reſpect of many notorious and opprobrious Actions againſt the Crown throughout their whole Employment, were as little ſatisfied with this Revolution as any Men could be, and were ſo univerſally odious both in *England* and *Ireland*, that if the King's Juſtice could have been obſerved, and their particular Caſes ſevered from the reſt, without Violation of the Rule which ſecured the reſt, any thing that could have been done to their Detriment would have been grateful enough. However, after a very tedious Debate his Majeſty being aſſured by thoſe who were thought to underſtand *Ireland* very exactly, and, upon the Surveys which had been taken of *Ireland* with great Punctuality, undertook that there was Land enough to ſatisfy all the Soldiers and Adventurers, and that there would be enough left for the Accommodation of the *Iriſh* in a liberal Proportion; and having given ſome Rules likewiſe and Limitations to the immoderate Pretences and Demands of the Soldiers and Adventurers upon the *Dublin* Ordinance, and imperfect Admeaſurements and ſome other Irregularities which in the Execution of the former Commiſſion they had indulged to themſelves, his Majeſty likewiſe diſpatched the ſecond Bill.

Whilſt this ſecond Bill was under Deliberation, there fell out ſome Accidents which produced great Altercations with reference to the Affairs of that Kingdom: The Earl of *Montroth*, who was one of the Juſtices, was lately dead; and it had been very apparent, that whilſt he was alive, the Difference between the three Juſtices, and their different Humours and Affections, had little advanced the ſettling the Government; ſo that they who took the moſt impartial Survey of all that was done, did conclude that nothing could be ſo reaſonably done towards a Settlement, as the deputing one ſingle Perſon to exerciſe that Government: And the Duke of *Albemarle* himſelf, who had a very conſiderable Eſtate in that Kingdom, which made him long for a Settlement, and who had both before the King's Return, and ever ſince, paſſionately inſiſted that the Duke of *Ormond* ſhould not be employed there; who likewiſe had as great an Averſion from the Thought of it; I ſay, the General now had ſo totally changed his Mind, that he told the King, that there was no Way to explicate the Kingdom out of thoſe Intricacies in which it was involved, but by ſending over a Lord Lieutenant thither: That he thought it not fit for his Majeſty's Service, that himſelf, who had the Commiſſion of Lord Lieutenant, ſhould be abſent from his Majeſty's Perſon; and therefore that he was very ready and deſirous to give up his Commiſſion; and that in his Judgment Nobody would be able to ſettle and compoſe the ſeveral Factions in that Kingdom but the Duke of *Ormond*, which he thought would be very grateful to all Sorts of People; and therefore his poſitive Advice was, that his Majeſty would as ſoon as was poſſible grant his Commiſſion of Lieutenancy to him, and ſend him over into *Ireland*; and both the King and the General had ſpoken with the Duke of *Ormond*, and prevailed with him to accept the Charge, before ever I heard of it; all of them believing that the Uncertainty of his being able to do the King Service, in ſo general a Diſunion and Jealouſy of Perſons, and Contradiction of Intereſts, and the great Affection and Friendſhip I had for the Duke of *Ormond*, would make me diſſuade him from expoſing himſelf to ſo hazardous an Undertaking; which was very true: But his Majeſty believing that it was very neceſſary for his Service, and the Duke having always reſigned himſelf to his Majeſty's Diſpoſal, he chearfully undertook the Employment; and his Majeſty named and appointed Sir *Richard Rainsford*, Serjeant at Law, (ſince made one of the Barons of his Majeſty's Exchequer at *Weſtminſter*) Sir *Edward Smith*, one of the Benchers of the *Middle-Temple*, (afterwards made Chief Juſtice of his Majeſty's Court of Common-Pleas in *Ireland*) *Henry Coventry*, one of his Majeſty's Bed-Chamber, Sir *Winſtan Churchill*, Colonel *Edward Cooke*, Sir *Edward Deering*, and Sir *Tho. Beverly*, all Perſons of very good Parts and very clear Reputations, to be his Commiſſioners for the Execution of the Bill of Settlement of *Ireland*: And with theſe, and all other Perſons who attended that Intereſt, the Duke of *Ormond* entered upon his Journey for that Kingdom about *July* or *Auguſt*, in the Year One Thouſand ſix hundred ſixty-four, full four Years after the King's happy Return into *England*. And when Mr. *Coventry* ſhortly after procured his Majeſty's Leave to return to his Attendance upon his Perſon, Sir *Allen Broderick* was appointed to ſerve in his Place as a Commiſſioner.

It was ſome Months before the Commiſſioners, after their Arrival in *Ireland*, could ſettle thoſe Orders and Rules for their proceeding, which were neceſſary before they appointed the People to attend: and it was as neceſſary that they ſhould, in the Order of their Proceedings, firſt proceed upon the *Iriſh*; both becauſe there ſhould be no Settlement of Soldiers or Adventurers in Poſſeſſion of any Lands, before the Title of the *Iriſh* was determined; and becauſe there was a Clauſe in the laſt Act of Parliament, that all the *Iriſh* ſhould put in their Claims by ſuch a Day, and be determined before ſuch a Time; which Time might be prolonged for once by the Lord Lieutenant and Council. So that the Delay for ſo many Months before the Commiſſioners ſat, gave great Argument of Complaint to the *Iriſh*, tho' it could not poſſibly be avoided, in regard that the Commiſſioners themſelves had not been nominated by the King above twenty Days before they began their Journey for *Ireland*: ſo that they could never ſo much as read over the Acts of Parliament together before they came to *Dublin*; and then they found ſo many difficult Clauſes in both Acts of Parliament, and ſo contrary to each other, that it was no eaſy Matter to determine how to govern themſelves in Point of Right, and to reduce themſelves to any Method in their Proceedings: But after they had adjuſted all things as well as they could, they publiſhed their Orders in what Method they meant to proceed, and appointed the *Iriſh* to put in their Claims by ſuch a Time, and to attend the Proſecution of them

them accordingly. And they had no sooner entered upon their Work, but the *English* thought they had begun it soon enough; for they heard every Day many of the *Irish*, who had been known to be the most forward in the first Beginning of the Rebellion, and the most malicious in carrying it on, declared innocent; and Deeds of Settlement and Entails, which had been never heard of before, and which would have been produced (as they reasonably believed) before the former Commissioners, if they had had them to produce, now declared good and valid; by which the *Irish* were immediately put into Possession of a very great Quantity of Land taken from the *English*: So that in a short Time the Commissioners had rendered themselves as generally odious as the *Irish*, and were looked upon as Persons corrupted for that Interest, which had every Day Success almost in whatsoever they pretended; and their Determinations happened to have the more of Prejudice upon them, because the Commissioners were always divided in their Judgments; and it is no Wonder that they who seemed most to adhere to the *English* Interest were most esteemed by them. The Parliament in *Ireland* was then sitting, and the House of Commons (consisting of very many Members who were either Soldiers or Adventurers, or had the like Interest) was very much offended at the Proceedings of the Commissioners, made many Votes against them, and threatened them with their Authority and Jurisdiction: but the Commissioners, who well knew their own Power, and that there was no Appeal against their Judgments, proceeded still in their own Method, and continued to receive the Claims of the *Irish* beyond the Time that the Act of Parliament or the Act of State limited to them, as was generally understood; and during their last eight or ten Days Sittings upon those Claims, they passed more Judgments and Determinations than in near a Year before, indeed with wonderful Expedition; when the *English*, who were dispossessed by those Judgments, had not their Witnesses ready, presuming that in Point of Time those Causes could not have been heard. By these Sentences and Decrees, many hundred thousand of Acres were adjudged to the *Irish*, which had been looked upon as unquestionably forfeited. This raised so great a Clamour, that the *English* refused to yield Possession upon the Decrees of the Commissioners; who, by an Omission in the Act of Parliament, were not qualified with Power enough to provide for the Execution of their own Sentences: The Courts of Law established in that Kingdom would not, nor indeed could, give any Assistance to the Commissioners; and the Lord Lieutenant and Council, who had, in the Beginning, by their Authority, put many of those into Possession of those Lands which the Commissioners had decreed to them, were now more tender and reserved in that Multitude of Decrees which had lately passed: so that the *Irish* were using their utmost Endeavours by Force to recover the Possession of those Lands which the Commissioners had decreed to them, whilst the *English* were likewise resolved by Force to defend what they had been so long possessed of, notwithstanding the Commissioners Determination; and the Commissioners themselves were so far troubled and dissatisfied with these Proceedings, and with some intricate Clauses in the Act of Parliament concerning the future Prosecution of that Affair, that though they had not yet made any Entrance upon the Decision of the Claims of the *English*, or of the *Irish* Protestants, they declared that they would proceed no farther upon the Execution of their Commission, until they could receive his Majesty's Pleasure; and for the better doing thereof, they desired his Majesty's Leave that they might attend his Royal Person; and there being at the same Time several Complaints made against them to his Majesty, and Appeals made to him from their Decrees, his Majesty gave the Commissioners Leave to return; and at the same Time all the other Interests sent their Deputies to solicit their Right: In the Prosecution whereof, after much Time spent, the King likewise thought fit to receive the Advice and Assistance of his Lieutenant; and so the Duke of *Ormond* likewise attended his Majesty, and the Settlement of *Ireland* was the third Time brought before his Majesty and his Council; there being then likewise transmitted a third Bill, as additional and supplemental to the other two, and to reverse many of the Decrees made by the Commissioners, they bearing the Reproach of all that had been done, or had succeeded amiss, and of all Persons who were grieved of any Kind soever.

The King was very tender of the Reputation of his Commissioners, who had been always esteemed Men of great Probity, and unquestionable Reputation; and though he could not refuse to receive Complaints, yet he gave those who complained no farther Countenance, than to give the others Opportunity to vindicate themselves; nor did there appear the least Evidence to question the Sincerity of their Proceedings, or to make them liable to any reasonable Suspicion of Corruption; and the Complaints were still prosecuted by those who had That taken from them which they desired to have kept for themselves. The Truth is, there is Reason enough to believe, that upon the first Arrival of the Commissioners in *Ireland*, and some Conversation they had, and the Observation they made of the great Bitterness and Animosity from the *English*, both Soldiers and Adventurers, towards the whole *Irish* Nation, of what Kind soever; the scandalous Proceeding of the late Commissioners upon the first Act, where they had not been guided by any Rules of Justice, but rejecting all Evidence which might operate to the taking any thing from them which they resolved to keep, the Judges themselves being both Parties and Witnesses in all the Causes brought before them; together with the very ill Reputation very many of the Soldiers and Adventurers had, for extraordinary Malice to the Crown, and to the Royal Family; and the notable Barbarity they had exercised towards the *Irish*, who, without Doubt, for many Years had undergone the most cruel Oppressions of all Kinds that can be imagined, many thousands of them having been forced, without being covered under any House, to perish in the open Fields for Hunger; the infamous Purchases which had been made by many Persons, who had compelled the *Irish* to sell their Remainders and lawful Pretences, for very inconsiderable Sums of Money: I say these, and many other Particulars of this Kind, together with some Attempts that had been made upon their first Arrival, to corrupt them, against all Pretences which should be made by the *Irish*, might probably dispose the Commissioners themselves to such a Prejudice against many of the *English*, and to such a Compassion towards the *Irish*, that they might be too much inclined to favour their Pretences and Claims; and to believe that the Peace of the Kingdom and his Majesty's Government might be better provided for, by their being settled in the Lands of which they had been formerly possessed, than by supporting the ill-gotten Titles of those who had manifested all imaginable Infidelity and Malice against his Majesty, whilst they had any Power to oppose him; and had not given any Testimony of their Conversion, or of their Resolution to yield him for the future a perfect and entire Obedience, when they could oppose him no longer; as if they desired only to retain those Lands they had gotten by Rebellion, together with the Principles upon which they had received them, until they should have an Opportunity to justify both by some new Power or Concurrence amongst themselves. Whencesoever it proceeded, it was plain enough the *Irish* had received more Favour than was expected or imagined; and in the very Entrance into the Work, to avoid the Partiality which was too apparent in the *English* towards each other, and their Animosity against the *Irish* as evident, very strict Rules had been set down by the Commissioners, what Kind of Evidence they would admit to be good, and receive accordingly; and it was provided, that the Evidence of no Soldier, or Adventurer, should be received in any Case, to which himself was never so much a Stranger; as, if his own Lot had fallen in *Munster*, and that he had no Pretence to any thing out of that Province, his Evidence should not be received as to any thing that he had seen done in *Lempster*, or *Conought*, or *Ulster*, wherein he was not at all concerned; which was thought to be a very unjust Rule, after so many Years expired, and so many Persons dead, who had likewise been present at those Actions: And by this Means many Persons were declared not to have been in Rebellion, when there was full Evidence that they had been present in such and such a Battle, and in such and such a Siege, if the Witnesses might have been received, who were then present at those Actions, and ready to give Testimony of it, and of such Circumstances as could not be feigned, if their Evidence might have been received. That which raised the greatest Umbrage against the Commissioners was, that a great Number of the most infamous Persons of the *Irish* Nation, who were looked upon by those of their own Country with the greatest Detestation, as Men who had been the most violent Fomenters and Prosecutors of the Rebellion, and the greatest Opposers of all moderate Counsels, and of all Expedients which might have contributed towards a Peace in the late King's Time, whereby the Nation might have been redeemed, and who had not had the Confidence so much as to offer any Claim before the late Commissioners, were now adjudged and declared Innocents, and so restored to their Estates; and that many others, who had in Truth never been in Rebellion, but notoriously served the King against the Rebels, both in *England* and in *Ireland*, and had never been put out of the Possession of their Estates, were now upon some slight Evidence, by the Interception of Letters, or Confession of Messengers that they had some Correspondence with the Rebels, though it was evident, that even that Correspondence was perfunctory, and only to secure them that they might pursue his Majesty's Service, were condemned, and had their Estates taken away from them. Many who had formerly made their Claims, without insisting upon any Deeds of Settlement, or other Conveyances in Law, now produced formal Settlements, in consideration of Marriage, or other like good Considerations in Law, made before the Beginning of the Rebellion; which being now proved by Witnesses enough, Decrees were every Day obtained for the Restitution of great Quantities of Land upon those Deeds and Conveyances: though the Forgeries of those Deeds, and Perjuries of the Witnesses, were very notorious, and some Instances were given of the Manifestation and direct Proof made of the Forgery of Deeds, upon which Decrees had been made, to the Satisfaction of the Commissioners themselves, within a very short Time after the pronouncing such Decrees, and yet no Reparation was given, but the said Decrees proceeded, and were executed with all Rigour. The Commissioners answered, That they had made no Decrees but according to their Consciences, and such as they were obliged to make by the Course and Rules of Justice; that they did not doubt, but in truth did believe, that there had been evil Practices used, both in forging of Deeds and corrupting of Witnesses, and that the same was equally practised by the *English* as well as the *Irish*; and therefore that they had been obliged to make that Order which had been so much excepted against, not to admit the Testimony of any *English* Adventurer or Soldier in the Case of another Adventurer or Soldier: for that it was very notorious they looked upon the Whole as one joint Interest, and so gratified each other in their Testimonies; and of this they gave many sad Instances, by which it was too evident, that the Perjuries were mutual, and too much entertained by the one and the other Side: That they had used the best Providence and Vigilance they could, by the careful Examination of the Witnesses, which were produced apart, and never in the Presence of each other, and by asking them all such material Questions as occurred to their Understandings, and which they could not expect to be asked, to discover the Truth, and to prevent and manifest all Perjury: That they had likewise used their utmost Diligence and Care to prevent their being imposed upon with false and forged Deeds and Conveyances, by taking a precise and strict View themselves of all Deeds produced; and interrogated the Witnesses with all the Cunning they could, upon the Matter and Consideration upon which such Deeds had been entered into, and upon the Manner and Circumstances in the Execution thereof; which was all the Providence they could use; and tho' they met with many Reasons oftentimes to doubt the Integrity of the Proceedings, and in their own private Consciences to apprehend there might be great Corruption, yet that they were obliged judicially to determine according to the Testimony of those Witnesses, and the Evidence of those Deeds in Law, against which no Proofs were made: That they had constantly heard all that the adverse Party thought fit to object, both against the Credit of any Witnesses, and the Truth of any Conveyances which were produced; upon which they had

rejected

rejected many Witneſſes, and diſallowed ſome Conveyances: but when the Objections were only founded upon Preſumptions and Probabilities, as moſt uſually they were, they could not weigh down the full and categorical Evidence that was given: That if they had yielded to the Importunities of the Perſons concerned, who oftentimes preſſed to have further Time given them to prove ſuch a Perjury, or to diſprove ſuch a Conveyance, it muſt have made their Work endleſs, and ſtopped all Manner of Proceedings, for which it appeared that they were ſtreightened too much in Time, and that in truth would have but opened the Doors wider for Perjury and other Corruptions; ſince it was very plain to them, that either Side could bring as many Witneſſes as they pleaſed, to prove what they pleaſed, and that they would bring as many as they believed neceſſary for the Work in hand: And therefore that the Commiſſioners having before preſcribed a Method and Rules to themſelves for their Proceeding, and that no Man could have a Cauſe in which he was concerned brought to hearing without his knowing when it was to be ſo heard, and ſo it was to be preſumed that he was well provided to ſupport his own Title; and therefore that they had thought fit, upon mature Deliberation amongſt themſelves, to adhere to the Order they had preſcribed to themſelves and others, and to conclude that they could not be able to prove that at another Day, which they were not to prove then: For the Diſcovery of any Forgery after the Decrees had been paſſed, and upon which they had given no Reparation, they confeſſed ſome few ſuch Diſcoveries had been made to them, by which the Forgery appeared very clearly; but as they had not Power by the Act of Parliament to puniſh either Forgery or Perjury, but muſt leave the Examination and Puniſhment thereof to the Law, and to the Judges of the Law; ſo that they had only Authority to make Decrees upon ſuch Grounds as ſatisfied them in their Conſciences, but had not any Authority to reverſe thoſe Decrees after they were once made and publiſhed, upon any Evidence whatſoever. They concluded with their humble Deſire to the King, that the ſtricteſt Examination might be made of their Corruptions, in which they were ſure to be found very innocent, againſt all the Malice that was diſcovered againſt them: That they had proceeded in all Things according to the Integrity of their own Hearts, and the beſt of their Underſtandings; and if they had, through the Defect of that, erred in any Part of their Determinations, they hoped their Want of Wiſdom ſhould not be imputed to them as a Crime.

Many who had a very good Opinion of the Perſons and Abilities of the Commiſſioners, were not yet ſatisfied with their Defence; nor did they believe that they were ſo ſtrictly bound to judge upon the Depoſition of ſuſpected Witneſſes: But that they were therefore truſted with an arbitrary Power, becauſe it was foreſeen that Juries would not have been intire; ſo that they were, upon weighing all Circumſtances, to declare what in their Conſciences they believed to be true and juſt: That if they had bound themſelves up by too ſtrict and unreaſonable Rules, that they ſhould rather have in Time reformed thoſe Rules, than thought to ſupport what was done amiſs, by the Obſervation of what they had preſcribed to themſelves; and it was believed that the intire Excluſion of the *Engliſh* from the proving of what could not in Nature be otherwiſe proved, was not juſt or reaſonable: That their Want of Power to reverſe or alter their own Decrees, upon any emergent Reaſons which could afterwards occur, was a juſt Ground for their ſerious Deliberation in and before they paſſed any ſuch Decrees; and their Excuſe for not granting longer Time, when it was preſſed for, upon Reaſons which were very viſible, was not to be juſtified, it not being poſſible for any Man to defend himſelf againſt the Claims of the *Iriſh*, without knowing what Deeds or Witneſſes they would produce for making good their Suggeſtions; and therefore it was as impoſſible for them to have all their Evidence upon the Place: Beſides that, it was very evident, that in their laſt ten Days of their Sitting (which were likewiſe thought to be when their Power as to thoſe Particulars was determined, and in which they had made more Decrees than in all the Time before) they had made ſo many in a Day (contrary to their former Rule and Method), that Men were plainly ſurpriſed, and could not produce thoſe Proofs which in a very ſhort Time they might have been ſupplied with; and the refuſing to allow them that Time, was upon the Matter to determine their Intereſt, and take away their Eſtates, without being once heard, and upon the bare Allegations of their Adverſaries; and in thoſe latter Decrees many Inſtances were given of that Nature, wherein the Evidence appeared to be very full, if Time had been given to produce it.

There was one very notable Caſe decreed by the Commiſſioners extremely complained of, and cried out upon by all Parties, as well *Iriſh* as *Engliſh*; and for which the Commiſſioners themſelves made no other Excuſe or Defence but the Receipt of a Letter from the King; which was not thought a good Excuſe for ſworn Judges, as the Commiſſioners were: It was the Caſe of the Marquis of *Antrim*; which Caſe having been ſo much upon the Stage, and ſo much enlarged upon, to the Reproach of the King, and even to the traducing of the Memory of his bleſſed Father; and ſome Men, who moſt contributed to what was unwarily done in that Affair, having done all they could to wound my Reputation, and to get it to be believed, that I miſled his Majeſty, by my Advice, to oblige that Marquis; I think it a Debt due to Truth, and to the Honour of both their Majeſties, as well as for my own Vindication, to ſet down a very particular Narration of that whole Affair; by which it will appear how far the King was from ſo much as wiſhing that any Thing ſhould be done for the Benefit of the Marquis, which ſhould be contrary to the Rules of Juſtice. Whilſt his Majeſty was in foreign Parts, he received frequent Advertiſements from *England* and from *Ireland*, that the Marquis of *Antrim* behaved himſelf very undutifully to him; that he had made himſelf very grateful to the Rebels, by calumniating the late King; and that he had given it under his Hand to *Ireton*, or ſome other principal Perſon employed under *Cromwell*, that his late Majeſty had ſent him into *Ireland* to join with the Rebels, and that he was not offended with the *Iriſh* for entering into that Rebellion. Which was a Calumny ſo falſe and ſo odious, and reflected ſo much upon the Honour of his Majeſty, that the King was long reſolved, as ſoon as God ſhould put it into his Power, to cauſe the ſtricteſt Examination to be taken concerning it: The Report having gained much Credit with his Majeſty, by the Notoriety that the Marquis had procured great Recommendations from thoſe who governed in *Ireland* to thoſe who governed in *England*; and that upon the Preſumption of that he had come into *England*, and as far as *St. Albans* towards *London*; from whence he was forced ſuddenly to return into *Ireland* by the Activity of his many Creditors, who, upon the News of his coming, had provided for his Reception, and would unavoidably have caſt him into Priſon; and no Recommendation could have inclined thoſe who were in Authority to do any thing extraordinary for the Protection of a Perſon, who from the Beginning of the *Iriſh* Rebellion lay under ſo ill a Character with them, and had ſo ill a Name throughout the Kingdom.

The King had been very few Days in *London*, after his Arrival from the Parts beyond the Seas, when he was informed that the Marquis of *Antrim* was upon his Way from *Ireland* towards the Court; and the Commiſſioners from *Ireland*, who have been mentioned before, were the firſt (if I remember well) who gave his Majeſty that Information; and at the ſame Time told him all that his Majeſty had heard before concerning the Marquis, and of the bold Calumnies with which he had traduced his Royal Father, with many other Particulars; all which they affirmed would be proved by unqueſtionable Evidence, and by Letters and Certificates under his own Hand. Upon this full Information (of the Truth whereof his Majeſty entertained no Doubt), as ſoon as the Marquis came to Town, he was, by the King's ſpecial Order, committed to the *Tower*; nor could any Petition from him, or Intreaty of his Friends (of which he had ſome very powerful) prevail with his Majeſty to admit him into his Preſence; but by the firſt Opportunity he was ſent Priſoner to *Dublin*, where he was committed to the Caſtle, his Majeſty having given Direction that he ſhould be proceeded againſt with all Strictneſs according to Law; and to that Purpoſe the Lords Juſtices were required to give all Orders and Directions neceſſary. The Marquis ſtill profeſſed his Innocence, and uſed all the Means he could to procure that he might be ſpeedily brought to his Trial, which the King likewiſe expected; but after a Year's Detention in Priſon, and nothing brought againſt him, he was ſet at Liberty, and had a Paſs given him by the Council there to come into *England*. He then applied himſelf to his Majeſty, demanding nothing of Favour; but expected Juſtice, and that after ſo many Years being deprived of his Eſtate, he might at laſt be reſtored to it, if nothing could be objected againſt him wherein he had diſſerved his Majeſty. He was a Gentleman that from his Youth had been bred up in the Court of *England*; and having married the Dutcheſs of *Buckingham*, he had been very well received by both their Majeſties, and was frequently in their Preſence; he had ſpent a very vaſt Eſtate in the Court, without ever having received the leaſt Benefit or Advantage from it; he had retired into *Ireland*, and lived upon his own Eſtate in that Country ſome Years before the Rebellion broke out; in the Beginning whereof he underwent ſome Suſpicion, having had ſome Correſpondence with them, and poſſibly made ſome Undertakings to them; but he went ſpeedily to *Dublin*, and from thence tranſported himſelf to *Oxford* to his Majeſty, to whom he gave ſo good an Account of all that had paſſed, that the King had no Doubt of his Affection to his Service, though he had little Confidence in his Judgment and Underſtanding, which were never very remarkable: Beſides that, it was well known that he had a very unreaſonable Envy towards the Marquis of *Ormond*, and would fain have it believed that his Intereſt in *Ireland* was ſo great, that he could eaſily reclaim that whole Nation to his Majeſty's Obedience; but that Vanity and Preſumption never gained the leaſt Credit with his Majeſty.

Upon the *Scots* entering into *England* with their Army upon the Obligation of their Covenant, and all his Majeſty's Endeavours to prevent it being diſappointed, the Marquis of *Montroſs* had propoſed to his Majeſty to make a Journey privately into *Scotland*, and to get into the *Highlands*; where, with his Majeſty's Authority, he hoped he ſhould be able to draw together ſuch a Body of Men as might give his Countrymen Cauſe to call for their own Army out of *England* to ſecure themſelves; and with this Overture, or upon the Debate thereof, that the Earl of *Antrim* (for he was then no more) might be likewiſe ſent into *Ulſter*, where his Intereſt lay, from whence he would be able to tranſport a Body of Men into the *Highlands*, where he had likewiſe the Clan of the *Macdonalds*, who acknowledged him to be their Chief, and would be conſequently at his Devotion; by which means the Marquis of *Montroſs* would be enabled the more powerfully to proceed in his Undertaking. The Earl of *Antrim* entered upon his Undertaking with great Alacrity, and undertook to the King to perform great Matters in *Scotland*, to which his own Intereſt and Animoſity enough diſpoſed him, having an old and ſharp Controverſy and Conteſtation with the Earl of *Argyll*, who had diſpoſſeſſed him of a large Territory there. All Things being adjuſted for this Undertaking, and his Majeſty being well pleaſed with the Chearfulneſs of the Earl's Undertaking, he created him at that Time a Marquis, gave him Letters to the Marquis of *Ormond*, his Lieutenant there, as well to ſatisfy him of the good Opinion he had of the Marquis of *Antrim*, and of the Truſt he had repoſed in him, as to wiſh him to give him all the Aſſiſtance he could with Convenience for the carrying on that Expedition for *Scotland*; and for the better preventing any Inconvenience that might fall out by the Raſhneſs and Inadvertency of the Marquis towards the Marquis of *Ormond*, his Majeſty ſent *Daniel O'Neil*, one of his Bedchamber, into *Ireland* with him, who had great Power over him, and very much Credit with the Marquis of *Ormond*, and was a Man of that Addreſs and Dexterity, that no Man could ſo well prevent the Inconveniences and Prejudice which his natural Indiſcretion and Levity might tempt the Marquis to, or more diſpoſe and incline the Lord Lieutenant to take little Notice of thoſe Vanities and Indiſcretions; and the King did likewiſe, having no Deſire that the Marquis ſhould ſtay long in *Dublin*, and he promiſing at his going from *Oxford*, that he would in Perſon

go into *Scotland* with his Forces, give him Leave to hold that Correſpondence with the *Iriſh* Rebels (who had the Command of the moſt *Northern* Parts, and without whoſe Connivance at leaſt he would very hardly be able to make his Levies, and tranſport his Men) as was neceſſary to that End: Within the Limits of which it is probable enough that he did not contain himſelf, and might ſay many Things which he had not the leaſt Authority to warrant him in.

Upon his coming to *Dublin*, the Lord-Lieutenant gave him all the Countenance he could wiſh, and aſſiſted him in all the Ways he could to proſecute his Deſign; but the Men were to be raiſed in or near the Rebels Quarters: And it cannot be denied but that the Levies he made, and ſent over into *Scotland*, under the Command of *Kalketo*, was the Foundation of all thoſe wonderful Acts which were afterwards performed by the Marquis of *Montroſs*; they were Fifteen Hundred very good Men, with very good Officers, all ſo hardy, that neither the ill Fare, nor the ill Lodging in the *Highlands* gave them any Diſcouragement, and gave the firſt Reputation to the Marquis of *Montroſs* of being at the Head of an Army, under which he drew together ſuch of the *Highlanders*, and others of his Friends who were willing to repair to him; but upon any Military Action and Defeat given by them to the Enemy, which happened as often as they encountered the *Scots*, they went always home with their Booty to their Houſes, and the *Iriſh* only ſtaid together with their General. And from this Beginning the Marquis of *Montroſs* grew to that Power, that after many Battles won by him with notable Slaughters of the Enemy, in one of which he defeated the Marquis of *Argyle*, with his Army of above treble the Number of what *Montroſs* had, and in which the Marquis of *Argyle* was forced to make his Eſcape, by putting himſelf almoſt ſingle into a Boat, and ſo putting himſelf off into the Sea, having left, beſides others, many of his own Name and Family dead upon the Ground; after which the Marquis of *Montroſs* marched victoriouſly with his Army, till he made himſelf Maſter of *Edenborough*, and redeemed out of the Priſon there the Earl of *Crawford*, Lord *Ogilby*, and many others of his Friends, who had been taken and ſent thither, with the Reſolution that they ſhould all loſe their Heads; and the Marquis of *Montroſs* himſelf did always acknowledge, that the Riſe of his good Succeſs was due and to be imputed to that Body of *Iriſh*, which had in the Beginning been ſent over by the Marquis of *Antrim*; to whom the King had acknowledged the Service by ſeveral Letters all in his own Hand, in which were very gracious Expreſſions of the Senſe his Majeſty had of his great Services, and his Reſolution to reward him. It is true, the Marquis of *Antrim* himſelf had not gone over with his Men, as he promiſed to do, but ſtayed behind in *Ireland*, under Pretence of raiſing a greater Body of Men, with which he would venture his own Perſon; but either out of Jealouſy or Diſpleaſure againſt the Marquis of *Montroſs*, or having, in truth, no Mind to that Service, he never purſued the one nor the other, but remained not only in the Enemies Quarters, but in their Councils, taking all Occaſions to croſs whatſoever the Lord-Lieutenant moſt deſired; by which he gave ſo great Advantages againſt himſelf, and might, in Strictneſs of Law, have been as ſeverely puniſhed by the King as the worſt of the Rebels. At laſt, after he had been taken Priſoner by the *Engliſh* or *Scotch*, and made his Eſcape out of their Hands, he tranſported himſelf into *Flanders*, and from thence came into the Weſt into the Harbour of *Falmouth*, when the Prince (his Majeſty that now is) was in *Cornwall*; to whom he immediately made Tender of his Service with two good Frigates which he had, and in which were likewiſe a Quantity of Arms, and ſome Ammunition, which he had procured in *Flanders*, for the Supply of *Ireland*. Moſt of the Arms and Ammunition were employed, with his Conſent, for ſupplying of the Troops and Garriſons in *Cornwall*; and his Majeſty made uſe of one of the Frigates to tranſport his Perſon to *Scilly*, and from thence to *Jerſey*; without which Convenience, the Prince had been expoſed to very great Difficulties. And after all which, *Dublin* being given up to the Parliament, and the King's Authority withdrawn from that Kingdom, he again tranſported himſelf into *Ireland*, and joined with the *Iriſh*, and was by them ſent into *France*, to deſire the Queen-Mother and the Prince to ſend the Marquis of *Ormond* to exerciſe his Majeſty's Government in that Kingdom; which was done accordingly, in the Manner as is mentioned before.

The Marquis of *Antrim* alledged all theſe Particulars, and produced many original Letters from the late King, the Queen-Mother and the Prince, in all which his Services had been acknowledged, and many Promiſes made to him; and concluded with a full Proteſtation, that he deſired no Pardon for any Thing he had ever done againſt the King; but if that there was the leaſt Proof that he had failed in his Fidelity to him, or had not, according to the beſt of his Underſtanding, advanced his Service, he looked for no Favour: But if his being in the *Iriſh* Quarters, and conſulting with them, without which he could not have made his Levies for *Scotland*, and his joining with them afterwards, when his Majeſty's Authority was withdrawn from thence, do, by the ſtrict Letter of the Law, expoſe him to Ruin without his Majeſty's Grace and Favour, he did hope his Majeſty would redeem him from that Miſery, and that the Forfeiture of his Eſtate ſhould not be taken, as if he were a Traitor and a Rebel to the King: And it appeared, that if he were reſtored to all he could pretend, his Debts were ſo great, and his Creditors had that legal Incumbrance upon his Fortune, that his Condition, at beſt, would not be liable to much Envy. Though the King had never been taken Notice of to have any great Inclination to the Marquis, who was very little known to him; yet this Repreſentation, and clear View of what he had done, and what he had ſuffered, raiſed great Compaſſion towards him in his Majeſty's Royal Breaſt; and he thought it would, in ſome Degree, reflect upon his own Honour and Juſtice, and upon the Memory of his bleſſed Father, if, in a Time when he paſſed by ſo many heinous Tranſgreſſions, he ſhould leave the Marquis to the Fury of his Enemies, for no other Crime upon the Matter, than for not having that Prudence and Juſtice in his Endeavours to ſerve the King, as he ought to have had; and the Rigour he had exerciſed towards him upon his firſt Arrival, in ſending him to be tried in *Ireland* by thoſe who enough wiſhed his Deſtruction, and that they had not been able to make the leaſt Proof againſt him, improved his Majeſty's good Diſpoſition towards him: Yet he refuſed poſitively to write a Letter to the Commiſſioners on his Behalf, which the Marquis moſt importunately deſired, as the only Thing that could do him good; but his Majeſty directed a Letter to be prepared to the Lord-Lieutenant, in which all his Allegations and Suggeſtions ſhould be ſet down, and the Truth thereof examined by the Lord-Lieutenant; and that if he ſhould be found to have committed no greater Faults againſt his Majeſty than thoſe which he confeſſed, that then the Letter ſhould be ſent to the Commiſſioners, that they might ſee both their Majeſties Teſtimonies in ſuch Particulars as were known to themſelves. And this Letter was very warily drawn, and being approved by his Majeſty, was ſent accordingly to the Lord-Lieutenant; and ſhortly after was, contrary to his Majeſty's Reſolution, and contrary to my Advice, and without my Knowledge and Privity, likewiſe ſent to the Commiſſioners; who had thereupon made ſuch a Decree as is before mentioned, and declared that they had made it only upon that Ground: Which gave his Majeſty ſome Trouble, and obliged him to inſert a Clauſe in the next Bill concerning that Affair. And this was the whole Proceeding that related to the Marquis of *Antrim*, in which I had no Temptation of any Kind to incline me; and I do yet want Underſtanding to comprehend how there was more Favour ſhewed towards him by his Majeſty, than he might in Truth very reaſonably pretend to, what Noiſe ſoever hath been raiſed, and what Gloſſes ſoever have been made upon that whole Tranſaction.

When his Majeſty entered upon the Debate of this Third Bill, which was tranſmitted to him for a Supplement and Addition to the former Two, he quickly found the Settlement propoſed, and which was the End of the Three Bills, was now grown more difficult than ever: All the Meaſures which had formerly been taken, from the great Proportion of Land which would remain to be diſpoſed of, were no more to be relied upon, but appeared to have been a wrong Foundation from the Beginning; which was now made more deſperate, by the vaſt Proportions which had been aſſigned to the *Iriſh* by the Commiſſioners Decrees; and ſomewhat had intervened by ſome Acts of Bounty from his Majeſty, which had not been carefully enough watched and repreſented to him. The King had, upon paſſing the former Bills, and upon diſcerning how much the *Iriſh* were like to ſuffer, reſolved to retain all that ſhould by Forfeiture, or otherwiſe, come to his Majeſty, in his own Power, to the End, that when the Settlement ſhould be made, he might be able to gratify thoſe of the *Iriſh* Nation, who had *had* any thing of Merit towards him, or been leaſt faulty; but he had unawares ſwerved from that Rule, and had made ſeveral Grants, out of his Royal Bounty, to many of his Servants, who had been encouraged by their Friends in *Ireland* to make thoſe Suits, and had procured Certificates from thence; which being produced to his Majeſty, had diſpoſed him to thoſe Conceſſions, which otherwiſe he would not ſo eaſily have paſſed: There was beſides, in all ſuch Grants, a new Clauſe introduced, of a very new Nature; for they being grounded always upon Letters out of *England*, and paſſed under the Great Seal of *Ireland*, the Letters were formed there, and tranſmitted hither only for his Majeſty's Sign Manual; ſo that neither his Majeſty's learned Counſel at Law, nor any other his Miniſters (the Secretaries only excepted) had any Notice of ſuch Grants. The Clauſe was, That if any of thoſe Lands ſo granted by his Majeſty ſhould be otherwiſe decreed, his Majeſty's Grantee ſhould be reprized with other Lands; ſo that in many Caſes the greateſt Inducement to his Majeſty's Bounty being the Uncertainty of his own Right, which the Perſon to whom it was granted was obliged to vindicate at his own Charge, his Majeſty was now bound to make it good if his Grant was not valid; and ſo that which was but a contingent Bounty, was turned into a real and ſubſtantial Benefit, as a Debt from his Majeſty: Which created another Difficulty in the Settlement; which was yet the more hard, becauſe there were many Claims of the *Iriſh* themſelves yet unheard, all the falſe Admeaſurements to be examined, and many other Uncertainties to be determined by the Commiſſioners, which left thoſe who were in Poſſeſſion, as well as thoſe who were not, in the higheſt Inſecurity and Apprehenſion.

This Intricacy, and even Deſpair, which poſſeſſed all Kind of People, of any Settlement, made all of them willing to contribute to any that could be propoſed. They found his Majeſty very unwilling to conſent to the Repeal of the Decrees made by the Commiſſioners; which muſt have taken away the Confidence and Aſſurance of whatſoever ſhould be done hereafter, by making Men ſee that what was ſettled by one Act of Parliament might be unſettled by another; ſo that there was no Hope by ſuch an Expedient to increaſe the Number of Acres, which being left might in any Degree comply with the ſeveral Pretences: The *Iriſh* found that they might only be able to obſtruct any Settlement, but ſhould never be able to get ſuch a one as would turn to their own Satisfaction: The Soldiers and Adventurers agreed leſs among themſelves; and the Clamour was as great againſt thoſe, who by falſe Admeaſurements had got more than they ſhould have, as from thoſe, who had received leſs than their Due; and they who leaſt feared any new Examination could not yet have any ſecure Title, before all the reſt were ſettled. In a Word, all Men found that any Settlement would be better than none; and that more Profit would ariſe from a ſmaller Proportion of Land, quietly poſſeſſed, and huſbanded accordingly, than of a much greater Proportion under a doubtful Title, and an Uncertainty which muſt diſhearten any Induſtry and Improvement. Upon theſe Conſiderations and Motives they met amongſt themſelves, and debated together by what Expedient they might draw Light out of this Darkneſs: There appeared only one Way which adminiſtered any reaſonable Hope, which was, by increaſing the Stock for Repriſals to ſuch a Degree, that all Men's Pretences might, in ſome Meaſure, be provided for; and there was no other Way to arrive to this, but by every Man's parting with ſomewhat which he thought his own: And to this they had one Encouragement, which was of the higheſt Importance to them, which was, that this Way an End would be put to the unlimited Juriſdiction of the Commiſſioners, (which was

very terrible to them) who from henceforth would have little other Power than to execute what ſhould be here agreed upon. In concluſion, they brought a Propoſition to the King, raiſed and digeſted between themſelves, that all Perſons, who were to receive any Benefit by this Act, ſhould abate and give a fourth Part of what he had towards the Stock for Repriſals; all which the Commiſſioners ſhould diſtribute amongſt thoſe *Iriſh* who ſhould appear moſt fit for his Majeſty's Bounty; and this Agreement was ſo unanimous, that though it met with ſome obſtinate Oppoſition after it was brought before his Majeſty, yet the Number of the Oppoſers was ſo ſmall in reſpect of the others who agreed to it, that they grew weary and aſhamed of farther Contention; and thereupon that Third Act of Settlement, as ſupplemental to the other Two, was conſented to by the King: who, to publiſh to the World that nothing ſtuck with him which ſeemed to reflect upon the Commiſſioners to their Prejudice, reſolved to make no Change; and ſo, though Mr. Baron *Rainsford*, and Sir *Thomas Beverly*, made their humble Suit to his Majeſty, that they might not return again into *Ireland*, his Majeſty did not grant their Requeſt, and continued Sir *Edward Smith*, who was now Chief Juſtice of the *Common-Pleas* in that Kingdom, Sir *Edward Deering*, Sir *Allen Broderick*, (who had ſucceeded Mr. *Coventry* in that Office, when he returned to Court) Sir *Winſtan Churchill*, and Colonel *Cooke*, his Commiſſioners, to execute what was done by this new Act, and ſo to perfect the Settlement. Theſe were all the Tranſactions with reference to *Ireland*, which I was privy to, and in which I aſſiſted, as all the reſt of my Lords of the Council who were preſent did; and did very little more in it than any of the reſt did, except when any Difficulties occurred in their private Meetings and Debates, they ſometimes reſorted to me for Advice; which I was very ready to give them to the beſt of my Underſtanding, being very ready and willing to take any Pains which might make that very difficult Work more eaſy to be compaſſed; but as I never deſerved any Reward for ſo doing, ſo I never received the Benefit of one Shilling in Money, or Monies-worth, for any thing that was done in that Affair; and was ſo far from entertaining any Overture made to that Purpoſe, that it is notoriouſly known to ſome Perſons of Honour, who, I preſume, will be ready to teſtify the ſame, that when, upon his Majeſty's firſt Return into *England*, ſome Propoſitions were made to me, of receiving the Grant of ſome forfeited Lands, and for the buying of other Lands there, upon the Deſire of the Owners thereof, and at ſo low a Price, that the very Profit of the Land would in a ſhort Time have paid for the Purchaſe; and other Overtures of immediate Benefit in Money, which others did, and lawfully might accept; I rejected all Propoſitions of that kind, or relating to it, and declared publickly and privately, that I would neither have Lands in *Ireland*, or the leaſt Benefit from thence, till all Differences and Pretences there were ſo fully agreed and ſettled, that there could be no more Appeal to the King, or repairing to his Majeſty and Council for Juſtice; in which I told them, I ſhould never be thought ſo competent an Adviſer, after I had any Title of my own in that Kingdom, to byas my Inclinations; and I never took a firmer Reſolution in any Particular in my Life, than to adhere to that Concluſion: Yet, becauſe it is notorious enough, that I did receive afterwards ſome Money out of *Ireland*, and have a very lawful Title to receive more, it is neceſſary, for my own entire Vindication, to ſet down particularly how that came to paſs, and to mention all the Circumſtances which preceded, accompanied, or attended that Affair.

Amongſt the Bills which were firſt tranſmitted from *Ireland* after his Majeſty's happy Return, there was an Impoſition of a certain Sum of Money upon ſome ſpecified Lands, in the ſeveral Provinces, (the Nature whereof I cannot charge my Memory with) which were to be paid to his Majeſty within a limited Time, and to be diſpoſed of by his Majeſty to ſuch Perſons who had ſerved him faithfully, and ſuffered in ſo doing, or Words to that Effect; for I may with a very good Conſcience ſay, that I never to this Minute read the Act of Parliament, and am almoſt confident that I never heard of it at the Time when it paſſed, being often abſent from the Council, by reaſon of the Gout, or other Accidents, when ſuch Matters were tranſacted. But very near two Years after his Majeſty's Return, I received a Letter from the Earl of *Orrery*, that there would be in his Hands, and the Earl of *Angleſey*'s and Lord *Mazzarin*'s, (who it ſeems were appointed Treaſurers to receive the Money raiſed by that Act of Parliament) a good Sum of Money for me; which he gave me Notice of, to the End that I might give Direction for the Diſpoſal thereof, whether I would have it returned into *England* to me in Money, or laid out in Land in *Ireland*; and he wiſhed that I would ſpeedily ſend my Direction, becauſe he was confident that the Money would be paid in at leaſt by the Time that my Letter could arrive there. No Man can be more ſurprized with any thing, than I was at the Receipt of this Letter; believing that there was ſome Miſtake in it, and that my Name might have been uſed in Truſt by ſomebody who had given no Notice of it; and without returning any Anſwer to the Earl of *Orrery*, I writ by that Poſt to the Lord-Lieutenant, (for it was after his firſt going into *Ireland*) to inform him what my Lord of *Orrery* had writ to me, and to deſire him to inform me, by his own Inquiry, what the Meaning of it might be. Before I had an Anſwer from the Lord-Lieutenant, or indeed before my Letter could come to his Hands, I received a ſecond Letter from the Earl of *Orrery*; in which he inform'd me, that there was now paid in, to my Uſe, the Sum of Twelve Thouſand Six Hundred Pounds, or thereabouts, and that there would be the like Sum again received at the End of Six Months; ſending me likewiſe a particular Direction to what Perſon, and in what Form, I was to ſend my Order for the Payment of the Money. I forebore likewiſe to anſwer this Letter, till I had received an Anſwer from the Lord-Lieutenant; who then inform'd me at large, what Title I had to this Money, and how I came to have it: That ſhortly after the paſſing of that Act of Parliament which had given his Majeſty the Diſpoſal of the Money before-mention'd, the Earl of *Orrery* had come to him, and putting him in mind how the *Chancellor* had rejected all Overtures which had been made to him of Benefit out of that Kingdom, (which Refuſal, and many others, which ſhew how unſolicitous I have always been in the Way of getting, is not more known to any Man living than to the Lord-Lieutenant) wiſhed that he would move his Majeſty to confer ſome Part of that Money upon him; which the Lord-Lieutenant very willingly did, and his Majeſty as chearfully granted: That a Letter was accordingly prepared, and his Majeſty's Royal Signature procured by Mr. Secretary *Nicholas*, who was at the ſame Time commanded by the King not to let me know of it; and to which Purpoſe there was likewiſe a Clauſe in the Letter, whereby it was provided that I ſhould have no Notice of it, which the Lord-Lieutenant ſaid was by his Majeſty's Direction, or with his Approbation; becauſe it was ſaid, that if I had Notice of it, I would be ſo fooliſh as to obſtruct it myſelf: And that there was a Clauſe likewiſe in the ſaid Letter, which directed the Payment of the ſaid Money to my Heirs, Executors, or Aſſigns, if I ſhould die before the Receipt thereof. Of all which being thus fully adverti'ed by the Lord-Lieutenant, and of which, till that Time I had not the leaſt Notice or Imagination, I deſired Mr. Secretary *Nicholas* to give me a Copy of that Letter, (which had been ſince paſſed as a Grant unto me under the Great Seal of *Ireland*, according to the Form of that Kingdom) which he gave me, with a larger Account of many gracious Circumſtances in the King's granting it, and the Obligation laid upon him of Secrecy, and the great Caution that was uſed that I might have no Notice of it. After I was inform'd of all this, I did not think there was any thing left for me to do, but to make my humble Acknowledgement to his Majeſty for his Royal Bounty, and to take care for the receiving and tranſmitting the Money to me, and that I might receive the ſame very honeſtly: I did thereupon wait upon his Majeſty with that Duty which became me; and his Majeſty was graciouſly pleaſed to enlarge his Bounty with thoſe Expreſſions of Favour, and the Satisfaction he had vouchſafed to take himſelf in the conferring his Donative, that my Joy was much greater from that Grace, than in the Greatneſs of the Gift.

At the very ſame Time, and the very Day that I received the Letter from the Lord-Lieutenant, the late Earl of *Portland* had come to me, and informed me of a Difference that was fallen out between the Lord *Lovelace*, and Sir *Bulſtrode Whitlocke*, upon a Defect in the Title to certain Lands purchaſed heretofore by the ſaid Sir *Bulſtrode Whitlocke* from the Lord *Lovelace*, and poſſeſſed by the other for many Years: That the Lord *Lovelace* had been compell'd, in the late ill Times, for the raiſing of Money to pay his Compoſition, and other neceſſary Uſes, to make Sale of his Manor of *Blunſden* in the County of *Wilts*, and that Sir *Bulſtrode Whitlocke* had purchaſed the ſame from him at a leſs Price than in truth it was worth: That though the Conveyances had been made and executed with all the Formality the Doctrine of that Time required; and that the Lord *Lovelace* had covenanted, that his Son, who was then under Age, ſhould join in the ſame Aſſurance when he ſhould accompliſh the Age of One-and-Twenty, which he had now newly done about the Time we are mentioning; and that the Lord *Lovelace* was reſolved, though he was in his Perſon liable to the Covenant, to take Advantage of the Alteration of the Times, and to compel Sir *Bulſtrode Whitlocke* to pay him more Money; or that his Son, who was Tenant in Remainder, ſhould enter upon the Land. The Earl ſaid, that he deſired to make an End between them; and that the Lord *Lovelace* (whoſe great Friend he was) ſhould receive ſome more Money, which his Condition required, without ſo great a Damage to Sir *Bulſtrode Whitlocke*, as by the Law he would be liable to, however the other might ſuffer in his Perſon; that upon Conference between them, he found that the Manor of *Blunſden* was joined to ſome Land I had in *Wiltſhire*, and would be very convenient to me, and therefore wiſhed that I would purchaſe it at a juſt Value, which would produce a Satisfaction to both the other. This Propoſition being made upon the very Day, as is ſaid before, that I received the Letter from the Lord-Lieutenant of *Ireland*, by which it appeared that there was near as much Money already received for me as would pay for that Purchaſe, beſides what would be more received within Six Months after, I wiſhed the Earl of *Portland* to bring both the Perſons concern'd to me within Two Days, in which Time I would reſolve what to do; nor did I need much Time to conſider of it; the Perſon who then rented the Whole, and the Land itſelf, being very well known to me: So that when they all came to me at the Time appointed, after a very ſhort Conference together, we agreed upon the Purchaſe, and appointed the Writings to be prepared and executed as ſoon as might be; when I promiſed to pay more Money together than is uſual in ſuch Purchaſes, preſuming I could not at all be diſappointed in the Return of that Sum of Money from *Ireland*, which was the ſole Ground and Encouragement I had to undertake that Bargain: But the very next Letters I received from thence informed me, that the Neceſſities of that Kingdom had been ſuch, that they could only return me Six Thouſand Pounds, and that they had been forced to make uſe of the reſt for the Publick, which would without doubt take care to repay me again within a few Months; and ſo I found myſelf engaged in a Purchaſe which I could not retract, upon a Preſumption of Money which in that manner I was diſappointed of: And I have not only never ſince received a Penny of what was due upon the Second Payment, (and which I preſumed would have been ſo certain, that I aſſigned it upon the Marriage of my Second Son to him, as Part of his Portion), but the Remainder of the firſt Sum was ſo borrowed or taken from me, that no Part of it hath been ſince paid to me, or to my Uſe: By which, and the Inconveniencies and Damage which hath ſince enſued to me from thence, I may reaſonably ſay, that I am yet a Loſer, and involved in a great Debt by that ſignal Bounty of his Majeſty, which I hope will, in due Time, be made good to me under ſo good a Security as an Act of Parliament; and I have great Reaſon to complain of thoſe my very good Friends who firſt diſpoſed his Majeſty to that Act of Grace, and were not afterwards ſolicitous enough in their ſeveral Places to make it effectual to me. And this is a very true Account of all that Buſineſs, and of all the Money which I ever received from *Ireland*, with all the Circumſtances thereof; which, I hope, in the Judg-

Judgment of all impartial Men, will not reflect to the Prejudice of my Integrity and Honour.

The Sixteenth Article is, *That I have deluded and betrayed his Majesty and the Nation, in all Foreign Treaties and Negotiations relating to the late War.*

I do heartily wish that those particular Treaties, and the Particulars in those Treaties, had been mentioned, wherein it was conceived that I had deluded and betrayed his Majesty, that I might have at large set down whatsoever I have known and done in those Treaties, and then it would easily have been made appear how far I have been from betraying and deluding him. It was never any Ambition of my own that brought me to have a Part in any Treaty; God knows, I heartily wished to have meddled in nothing but the Administration of that great Office the King thought fit to entrust me with; but his Majesty had so good an Opinion of me then, that he required and commanded my Service in many of those Treaties; and therefore it will be necessary for me, according to the Method I have hitherto used, to mention every particular Treaty that hath been entered into, since the Time of his Majesty's Return into *England*, and the Part that I have had in it: Being as willing to be called to the strictest Account for any other Treaty he had made when he was Abroad, or for any other Counsel I have ever given in my Life, publick or private; wherein, I doubt not, I shall be found to have behaved myself (according to the weak Abilities God Almighty hath given me) with Fidelity to my Master, and with all imaginable Affection to my Country, how unhappily soever I am represented.

The first Treaty was with the Crown of *Portugal*, in which I was none of the Commissioners who treated, and was only present when any Report was made by the Commissioners to the Council-Board, where all the Articles were debated; and I do not remember that there was any Difference of Opinion upon any of them; and that Treaty hath been generally held the best that hath been made with any Crown, the Merchants having thereby greater Advantages in Trade than they have in any other Place, besides many other great Benefits, with a great Enlargement of his Majesty's Empire.

The second Treaty was with the *States* of the *United Provinces*, in which likewise I was none of the Commissioners who treated; but all that was by them transacted was still brought to the Council-Board, and debated there in his Majesty's Presence; in which the Rule by which his Majesty guided himself was, as I remember, that he would not remit any of those Concessions which had been formerly made by them in their last Treaty with *Cromwell*; and their Unwillingness to consent to that was the Reason that their Ambassadors proceeded so slowly: And his Majesty had the less Reason to be solicitous for Expedition, because the King of *France* had given him his Royal Word, and proposed it himself, that the two Crowns might proceed in their several Treaties with the *Dutch* together, that so they might be brought to such good Conditions, that they might live like good Neighbours with both the Crowns, which, he observed, they were not naturally inclined to do; and promised positively, that, for his Part, he would not conclude any Thing with the *Dutch*, before he had entirely communicated the same to his Majesty. Notwithstanding which Engagement, *France* entered into and finished their Treaty, and in it made that secret Article, which they declared afterwards to be the Ground and their Obligation to assist the *Dutch* in the ensuing War. However, his Majesty proceeded not, till the *Holland* Ambassadors consented to all which had been granted before to *Cromwell*; which being done, the Peace was made and ratified on both Sides, and, without Doubt, with more Advantage and Honour to the *English*, than ever had been provided by any former Treaty between the Crown of *England* and those States.

From the two Crowns of *Sweden* and *Denmark*, Ambassadors Extraordinary arrived here shortly after his Majesty's Return, and the several Treaties were made with both those Crowns before the Departure of the Ambassadors; in neither of which Treaties I was a Commissioner, nor knew any Thing that passed in either, but as it was represented at the Council-Board, and debated in his Majesty's Presence; nor did I ever hear that either of them was reckoned a disadvantageous Treaty, both of them containing as much Benefit to the *English* as any Treaties which had been made before with those Crowns. It is very true, there were some unusual Expressions of Kindness and Friendship in the Treaty with *Denmark*; which in respect of that King's being at that Time in a very low Condition, under the disadvantageous Conditions of the Treaty of *Copenhagen* newly submitted to, and under almost as ill a Treaty extorted from him by the *Dutch*, and yet being in terrible Apprehension of some new Oppression from the one and from the other, the Ambassador did very earnestly solicit to have inserted, and were, upon great Deliberation, allowed and inserted by his Majesty's own particular Direction; in consideration of the near Alliance in Blood between his Majesty and that King; and the Civilities and Obligations his Majesty had received from *Denmark*, during his Majesty's being in *Holland*, after the Murther of his Father; and during his being in *Scotland*, when the King of *Denmark* sent him Horses, Arms and Ammunition; of which his Majesty had so great a Sense, that he was often heard to say, That if it had pleased God to have brought him Home before that disadvantageous Peace at *Copenhagen* had been made, which was done by the Countenance of the *English* Ships, and the Threats of those who were then Ambassadors from the governing Power in *England*, that he would have done the best he could to have defended and protected him; and therefore he did very readily yield to that Article drawn by the Ambassador; his Majesty declaring at the same Time, that he was very willing that those Princes who were Neighbours to *Denmark*, and from whom that Kingdom apprehended new Oppressions, should know his Majesty's Resolution to support that King, and defend him from new Injuries, to which the Policy of his Government, as well as his Inclination, invited and obliged him; though it is very true, the King of *Denmark* did shortly after make very ill Returns to his Majesty for that his so signal Affection.

These were all the Treaties made by the King before the War with the *Dutch*, for there was very little Progress made either with *France* or *Spain* for the Reasons mentioned before, except only a short Treaty with the Elector of *Brandenburgh*; which Treaty, for the most Part, was particular with reference only to the Prince of *Orange*, his Majesty's Nephew, and for the better ordering of his Affairs; in which Treaty his Majesty likewise employed five or six of his Privy-Councillors; and the few Articles between his Majesty and that Elector in Point of State, were likewise transacted by them, and debated and considered at the Council-Board, and in which all Things were inserted for his Majesty's Benefit and Service; and if they had not been afterwards violated by the Elector, his Majesty had reaped much Fruit and Advantage even by that Treaty.

After the War was entered into with *Holland*, his Majesty sent Mr. *Coventry* to *Sweden*, and Sir *Gilbert Talbott* to *Denmark*, to dispose those two Crowns to a Confidence in each other, and then to dispose them both to adhere to his Majesty, or at least not to favour or assist the *Dutch*. The Treaty with *Sweden* succeeded to his Majesty's Wish, and was concluded in a League Defensive, very much to the King's Satisfaction, and with the full Approbation of the whole Board; that Crown having manifested so much Affection to his Majesty, and such an Inclination to an entire Conjunction with him, that upon very reasonable Conditions they would have been induced to have entered into a League Offensive, and even in the present War against the *Dutch*: In order to which, they sent their Ambassadors hither, at the same Time when Mr. *Coventry* returned, and they became the Mediators for the Peace; having first declared to his Majesty, that if the Treaty should prove ineffectual, the Crown of *Sweden* would immediately join with his Majesty in the War against the *Dutch*. What became of the other Treaty with *Denmark* is publickly known, his Majesty having declared to all the World how perfidiously he was treated by the *Dane*.

There remains only One other Treaty to be mentioned, which is the last with the *Dutch*, upon which the Peace was made; and therefore it will be necessary to set down the Inducements to that Treaty, the whole Progress and Conclusion of it: By all which it will easily appear that his Majesty was neither betrayed or deluded in it; or if he were, that it was not done by me. After so many Encounters and various Successes in the War, which had been carried on with a much greater Expence than his Majesty, at his first Entrance into it, was persuaded it would cost him, when he saw the Strength and Power of the *Dutch* so much increased by the Conjunction of *France* and *Denmark*, which supplied them with Money, Ships, and (what they had more wanted) with Men as many as they desired; and that all the Propositions he could make to *Spain* could not induce them to enter into such an Alliance with him as might embark them against *France*; notwithstanding it was evident to all but themselves, that the *French* resolved to break the Peace with them, having at that Time published those Declarations, which they afterwards made the Ground of the War: His Majesty clearly discerned, that the *Dutch* grew less weary of the War than they had before seemed to have been; and that they would be able, with that Assistance and Conjunction, to continue the War with less Inconvenience than his Majesty was like to do. He had found it necessary for the streightening the Trade of the Enemy (the depriving them of which could only induce the *Dutch* to desire a Peace, and which he could not do by the Strength of his own Ships, which were still kept together to encounter their Fleet) to grant as many Commissions upon Letters of Mart to private Men of War as desired the same, and with such strict Orders and Limitations as are necessary in those Cases; and he found indeed the Advantage very great, in the Damage those Men of War did to the Enemy, which was considerable, and gave them great Trouble: On the other Side, the common Seamen chose much rather to go on board those Men of War; where their Profit out of their Shares of the Booty was greater, and their Hazards much less than in the King's Ships, where they got only Blows without Booty, though their Pay and Provisions were much greater than they had been in any former Times; so that when the Royal Fleet was to be sent out, there was greater Difficulty in procuring Seamen and Mariners to man it. And then, whereas the Advancement of Trade was made the great End of the War, it was now found necessary to suppress all Trade, that there might be Mariners enough to furnish the Ships for the carrying on the War; and this Inconvenience produced another Mischief; for, by the great Diminution and even Suppression of Trade, there was likewise so great a Fall in the Customs, Excise, and all other Branches of the King's Revenue, that it was evident enough, that his Majesty would have very little to carry on the War, but what should arise by Imposition in Parliament upon the People; who already complained loudly of the Decay of their Rents, of the small and low Prices which their Commodities yielded by the Cessation of Trade, and especially by the carrying out of all the Money in Specie from the several Counties, to *London*, for the carrying on of the War; and the Parliament itself appeared to be so weary of it, that instead of granting a new Supply, proportionable to the Charge, they fell upon Expedients to raise Money by Sale of Part of the King's Revenue, which was already too small to support the ordinary and necessary Expence of the Crown: But above all, his Majesty was most discouraged by the extreme Licence of the Seamen in general; but especially of those who were called Privateers, set out in the particular Ships of War upon Adventure, who made no Distinction between Friends and Foes; but, as if the Sea had been their own Quarters, they seized upon all Ships which came within their View, and either pillaged them entirely, and so dismissed them, (which they usually did to those which they foresaw would be delivered by the Course of Justice) or else brought them into the Harbours after they had taken from them what they best liked. And then the formal Proceedings in the Court of Admiralty, were so dilatory and involved in so many Appeals, that the Prosecution of Justice for Injuries received grew as grievous as the Injury itself; which drew a universal Clamour from all Nations, that, without being Parties to the War, they were all treated as Enemies. *France* had made the Damage they had this Way received, and the Interruption of their Trade, a great Part of their Quarrel, and one Ground of their Conjunction with the *Dutch*. From *Spain*, which really wished better to us than to our Enemies, the Complaints were

were as great; that their whole Trade was deſtroyed; their Ships of *Flanders*, which ſupplied *Spain* with what they wanted for themſelves, and with what was neceſſary for their Trade and Intercourſe with the *Indies*, were all taken as *Dutch*, becauſe it was very hard to diſtinguiſh them by their Language; which was likewiſe the Caſe of all the *Hans-Towns*, which made grievous Complaints, and had, without doubt, received great Damage. Thoſe Provinces of *Italy*, whoſe Dominions reached to the Sea, as the two Republics of *Venice* and *Genoa*, and the Duke of *Florence*, expoſtulated very grievouſly for their ſeveral Ships taken by thoſe Free-booters of *Scotland* and of *Ireland*, both which Nations enriched themſelves very much upon ſuch Depredations; and how much ſoever the Royal Navy was every Day weakened, the Number of the Men of War wonderfully increaſed: So that thoſe Kind of Ships, of *England*, *Scotland*, and *Ireland*, covered the whole Ocean; and of thoſe Ships which were taken and carried into *Scotland* or *Ireland*, (in *England* there were many Re-deliveries) it was obſerved, that there were *Veſtigia nulla retrorſum*. Even *Sweden* itſelf, with whom a new ſtricter Alliance was then entered into, with as ſevere Reſtrictions to that Licence of the Men of War as could be contrived for the Liberty and Security of the Trade of that Crown, complained exceedingly of the Violation of all thoſe Conceſſions and Proviſions, and that their Ships were every Day taken and plundered. And this univerſal Complaint began to awaken all Princes to a Jealouſy, that the *Engliſh* endeavoured to reſtrain all Trade, till they could make themſelves the entire Maſters of it. And it is very true, in the firſt Entrance of the War there had been many unſkilful Expreſſions, even in the Parliament, as well as in the frequent Diſcourſes of Parliament-Men, that by this War, and by ſuppreſſing the *Dutch*, (of which they made not the leaſt doubt) the King would be able to give Law to all the Trade of the World, and that no Ships ſhould paſs the Sea without paying ſome Tribute to *England*; which Liberty and Raſhneſs in Diſcourſe, made a great Impreſſion upon thoſe who wiſhed any Miſchief to the *Dutch*, till they ſaw what Danger might enſue to themſelves by the Succeſs of the *Engliſh*; and thereupon wiſhed that they might break themſeves upon each other, without Advantage to either Party: And this general Temper and Complaint made the deeper Impreſſion in his Majeſty, by his diſcerning an extreme Difficulty, if not an Impoſſibility, to give a juſt Remedy to it; and, conſequently, that he ſhould be ſhortly looked upon as a common Enemy. He had taken very great Pains, upon deliberate Conſultations, to ſuppreſs that odious Irregularity and deſtructive Licence that was practiſed amongſt the Seamen, and had, in many particular Caſes, himſelf examined the Exceſs, and cauſed exemplary Juſtice to be done upon the Offenders, and Reſtitution to be made of what had been taken, at leaſt of what was left; for no Juſtice could preſerve the injured Perſons from being Loſers: He granted ſuch Rules, and Privileges, and Protection to the Ports of *Flanders*, and to others of his Allies, as themſelves deſired, and looked upon as their full Security; but then he quickly found, that from thoſe very Ports, and in thoſe very Ships which enjoyed thoſe Privileges, the Trade of the *Dutch* was driven on: So that it was evident enough, that by that Liberty which other Nations thought themſelves in Juſtice intitled to, if not reſtrained, the *Hollanders* themſelves would be eaſily able to carry on their whole Trade in the Ships of *Flanders*, *Hamborough*, and the other Free Towns, or in their own Ships owned by the other; and that the Reſtraint would be likewiſe impoſſible, without a total Suppreſſion of the Men of War, and a Revocation of all Commiſſions granted to any of them; which muſt likewiſe be attended with the Freedom and Security of Trade to all his Majeſty's Enemies. In the laſt Encounter at Sea, the *Prince Royal*, and Three others of his Majeſty's Navy, had been loſt; and another (the *London*) had been burnt in the River by the Negligence of the Seamen; for there was never any Diſcovery made, that there was any Purpoſe or Malice in it: The *French* had obliged themſelves, that the Duke de *Beaufort*, Admiral of *France*, ſhould, with the whole Fleet under his Command, amounting to Eighteen good Ships, join with the *Dutch*; and the King of *Denmark* was likewiſe engaged to ſend all his greateſt Ships, which were Ten or a Dozen, in order to the like Conjunction. So that his Majeſty clearly diſcerned that the Enemy would be much ſuperior to him in Strength and Power, though he ſhould have been able to have manned and ſet out all his Royal Navy; which he very well foreſaw he ſhould not be able to do, both for Want of Money, and Want of Seamen, who were already in great Diſorder and Mutiny for Want of their Pay, of which there was indeed a great Arrear due to them; and which was worſe, there was grown ſuch an Animoſity amongſt the principal Officers of the Fleet between themſelves, that the whole Diſcipline was corrupted; ſo that it was hard to reſolve into what Hands to put the chief Government thereof, if it could have been made ready. Upon which, and the whole State of Affairs, upon Deliberation and frequent Conſultation with the principal Officers of the Sea, and ſuch others whoſe Experience in ſuch Matters rendered them moſt capable to give Advice, his Majeſty found it moſt counſellable to reſolve to make a defenſive War the next Year, and to lay up all his great Ships; and to have ſome Squadrons of the lighter Veſſels continue in ſeveral Quarters aſſigned to them, which ſhould be ready to take any Advantage which ſhould be offered; and that there ſhould be likewiſe ready in the River another good Squadron of Ships againſt the End of the Summer, which being ready to join with thoſe which lay out, when the Enemy was weary, and their Ships foul, ſhould be able to make many notable Advantages upon them; of which they who adviſed it were ſo confident, that they did believe this Defenſive Way, thus ordered and proſecuted, would prove a greater Damage to the Enemy in their Trade, and all other Reſpects, than they had ever yet undergone. And in all this Counſel and Reſolution I had no other Part than being preſent; and not underſtanding the ſubject Matter of the Debate, I thought myſelf not to be able to anſwer any of the Reaſons which had been alledged.

Theſe Conſiderations, upon a full Survey of his ill Condition at Home and Abroad, induced his Majeſty to wiſh that there were a good End of the War; which Inclination his Majeſty vouchſafed to inform me of, well knowing that I would be very glad to contribute all I could to it, as the Thing I deſired moſt in this World, and which I thought would prove the greateſt Benefit to the King and Kingdom; and his Majeſty likewiſe told me, that he found all thoſe who had been moſt forward and impatient to enter into this War, were now weary of it, and would be glad of a Peace: So that there remained now nothing more to do, than for his Majeſty to adviſe with whom he thought fit (for there ſeemed many Reaſons to conceal both the Inclination to Peace, and the Reſolution not to ſet out a Summer Fleet, from being publickly known) what Method to obſerve, and what Expedients to make uſe of, for the better ſecuring this wiſhed-for Peace, without appearing to be too ſolicitous or importunate for it, or ſo weary of the War as in truth he was; and to this Conſultation his Majeſty was pleaſed to call, together with his Royal Brother, Prince *Rupert*, the General, the Lord Treaſurer, myſelf, and thoſe other honourable Perſons with whom he uſed to adviſe in his moſt ſecret and moſt important Affairs.

That which occurred firſt was, to conſider whether there were any Hope of dividing the *French* from the *Dutch*; upon which Suppoſition the Proſpect was not unpleaſant, the War with one of them being hopefully enough to be purſued; the Conjunction was only formidable: And to this purpoſe ſeveral Attempts were made both in *France* and *Holland*; both Sides being equally reſolved not to ſeparate from each other, 'till a joint Peace ſhould be made with *England*, though they both owned a Jealouſy of each other, thoſe of *Holland* having a terrible Apprehenſion and Foreſight of the King of *France*'s Deſigns upon *Flanders*, which would make his Greatneſs too near a Neighbour to their Territories; beſides, that the Logick of his Demands upon the Devolution and Nullity of the former Treaty upon the Marriage, was equally applicable to their whole Intereſt, as it was to their Demands from the King of *Spain:* And *France*, upon all the Attacks they had made both in *France* with the Ambaſſador there, and in *Holland* by their own Ambaſſador, found clearly, that they were to expect no Aſſiſtance from the *Dutch* in their Deſigns, and that at leaſt they wiſhed them ill Succeſs, and would probably contribute to it upon the firſt Occaſion; and this made them willing to determine their ſo ſtrict Alliance, which was already very chargeable to them, and not like to be attended with any notable Advantage, except in weakening an Ally from whom they probably promiſed themſelves more good. However, neither the one or the other could be induced to enter into any Treaty apart, though, they both ſeemed willing and deſirous of a Peace; in order to which, the *Dutch*, through the *Swedes* Ambaſſador's Hands, had writ to the King, to offer a Treaty in any ſuch neutral Place as his Majeſty ſhould make choice of; profeſſing that they ſhould make no ſcruple of ſending their Ambaſſadors directly to his Majeſty, but that their Conjunction with the other two Crowns, which required a neutral Place, would not admit that Condeſcenſion; and at the ſame Time they intimated to the *Swedes* Ambaſſadors, that the King of *France* would not ſend his Ambaſſadors into *Flanders*, or any Place of the King of *Spain*'s Dominions; and therefore wiſhed that his Majeſty would make choice of *Diſſeldorp*, *Cullen*, or *Frankfort*, or *Hamborough*, or any other Place which his Majeſty ſhould think more convenient than the other, under that Exception: All which Places, and in truth any other out of the King of *Spain*'s Dominions, were at ſuch a Diſtance (the Winter being now near over), that there could be no reaſonable Expectation of the Fruit of the Treaty in Time to prevent more Acts of Hoſtility.

About this Time the Earl of St. *Albans* having been ſent into *England* by the Queen-Mother upon her own particular Affairs, Monſieur *De Ruvigny* did write to him, that that Court did earneſtly deſire a Peace; and that, if he were in *France*, he did believe ſome Expedient might be found that would produce the ſame; and he continued for many Weeks together to write very earneſtly to the Earl of St. *Albans* to come into *France* with Authority to treat and conclude a Peace, and that it might be made before ſuſpected. All which Letters the Earl ſhewed to his Majeſty. Mr. *De Ruvigny* was a Perſon very well known to the King, and many orhers in the Court, to be too wiſe a Man to write upon ſuch a Subject, and in ſuch a Manner, without very good Authority; and that he was likewiſe a Man of Honour, and would not ſuffer himſelf to be made uſe of upon any unworthy Deſign; and therefore his Majeſty concluded, that it would be fit that the Earl of St. *Albans* ſhould tranſport himſelf into *France*; who having diſpatched all the Buſineſs for which he was ſent by the Queen, his Return could adminiſter no Cauſe of Jealouſy to any; nor had he ſo much as a Letter of Credit from the King, and only had Direction to underſtand from Monſieur *De Ruvigny*, upon what Ground he had ſo earneſtly invited him over, and to receive any Propoſition he or any body elſe ſhould offer in order to Peace, which he ſhould tranſmit to his Majeſty, and expect an Anſwer; with a poſitive, negative Inſtruction, that if any Propoſition ſhould be made to him to oblige his Majeſty to aſſiſt the *French* againſt *Flanders*, he ſhould utterly reject it.

At the ſame Time the Baron *De Iſſola*, who was Envoy from the Emperor, and a much more dexterous Man than the *Spaniſh* Ambaſſador, and ſo more relied upon in *Madrid* as well as *Vienna*, in thoſe Affairs which concerned their Joint Intereſt, pretended to have received Letters from *Holland*, by the Conſent and with the Privity of *De Witt*, that they had there a great Mind to Peace; and that if *De Witt* (who was looked upon as the only Man that oppoſed it) might receive any Aſſurance of the Good-will and Protection of the King, he would be willing to negotiate the Peace, whether *France* ſhould be willing to it or no; and the Baron (who had nothing more to ſolicit on the Emperor's Behalf) offered immediately to take his Leave and return to *Bruſſels*, and from thence he would go *incognito* to the *Hague*, and confer with *De Witt*, and would thereupon give his Majeſty Advertiſement what he might depend upon. The King would have thought the better of any Peace that had been procured without the Interpoſition of *France*, and therefore willingly conſented to his Journey; and gave him Leave to aſſure *De Witt*, that he ſhould find all poſſible Good-will and Friendſhip from his Majſty, and

that

that his Majesty desired nothing more than a just and an honourable Peace, and upon such Conditions as might make it lasting.

Whilst these Matters were in Agitation in *France* and in *Holland*, the *Swedes* Ambassadors earnestly solicited for an Answer to the Letter they presented to his Majesty from the *States*, concerning a Neutral Place; which put his Majesty to another Deliberation. Not to return any Answer, would be interpreted a Refusal of the Treaty, and so make his Majesty appear to all Christian Princes to be better pleased with the War. To accept of any of those Places insinuated from the *Dutch*, would be against his Dignity, in so far condescending to the unreasonable Imposition of the King of *France*; and yet to nominate any Place in *Flanders* for the Treaty, after *France* had so positively declared itself, would be interpreted both by *France* and *Holland* as a Rejection of the Treaty, at least would make *France* less solicitous for a good End of it. When his Majesty called that Committee of the Board to consult upon some Expedient in this Affair, he proposed himself one Expedient, which I am sure I had not heard of before; which was, to make Choice of the *Hague* for the Place to treat in. The Condescension to *Holland*, in sending his Ambassadors to treat in their own Province, was not, upon a Disquisition of it, thought to be of that Importance, as to neglect the Benefits and Conveniencies which might reasonably be expected from the having it in that Place. The People were not only generally very weary of the War, and desirous of a Peace, but the *States* themselves were very much divided, and *De Witt* had been exposed to many Difficulties and Reproaches, under the Character of being the sole Person who desired the Prosecution of the War; and he had prevailed most, by taking upon him to assure the *States*, that the King had no Thoughts of Peace, but only laboured to separate *France* from them, and divide them amongst themselves. There could not be a greater Manifestation of his Majesty's ardent Desire of Peace, than by offering to send his Ambassadors to the Place where the Body of the *States* themselves resided, and who would be the only Judges of the Reasonableness of what his Majesty should propose, and by being upon the Place might give all Expedition to the Work: Besides, that all other Princes concerned had their Ministers likewise there; and therefore if his Majesty's Overture in this Particular should be rejected, all the World would conclude that the *Dutch* would not endure so much as to hear of Peace. And upon these Reasons the Resolution was taken to name the *Hague* for the Place of the Treaty; and his Majesty's Letters were dispatched accordingly.

The first News we heard from *Paris* and the *Hague*, after the Earl of St. *Albans* being arrived there, and the Baron *De Issola* at *Brussels*, was a great Complaint, that the King had sent the Baron *De Issola* privately to the *Hague* with Overtures of Peace; but especially with Design to divide *Holland* from *France*, and to persuade them to break their Alliance with them; in which there were some particular Expressions which his Majesty had in truth used to the Baron *De Issola*, and many other which he had never used. The King had Reason to conclude from hence, that *De Witt* was never to be treated withal privately; and that the Baron *De Issola* was not to be trusted, he having persuaded and prevailed with his Majesty to give him Leave to speak with *De Witt* upon some Letters he had shewed the King from Monsieur *Friquett*, the Emperor's Envoy at the *Hague*, a Gentleman not unknown to his Majesty, and of a very clear Reputation; wherein there was Mention of a Discourse made by *De Witt* to him, which might very well encourage the King to give that in Charge to the Baron, which his Majesty had in truth commended to him: Nor in truth had it been material, if he had said no more than his Majesty gave him Leave to do; which yet he promised not to mention, except he clearly discerned the other to be very willing to deal as freely with his Majesty; but it plainly appeared that the Baron had far exceeded his Commission, and said many Things for which he had not any Power, and which in truth had never passed in Discourse between the King and him. And as the King of *France* had always expressed the greatest Prejudice, and the most bitter Jealousy, from the Time that the Baron was designed for *England*, as a Person who delighted in nothing so much as in puzzling and perplexing, and creating Intricacies in all Treaties in which he had ever been engaged, which had been many in several Courts of *Christendom*; so indeed his Parts were most proportioned for embroiling and for preventing any Conclusion, in which he gave himself Leave to say and do any Thing which he thought would contribute to his End, without the least Consideration of Ingenuity or Sincerity in the Matter; though otherwise it cannot be denied that he was a Man of great Parts, and of a universal Understanding in the Affairs of *Christendom*.

At the same time the King of *France* complained of the Authority given by his Majesty to the Baron *De Issola*, we found in the *Dutch* printed *Gazette* the Copy of a Letter written then by the King of *France* himself to the *States*; in which he informed them of the Earl of St. *Albans* being newly come to him with Propositions from the King of *England* in order to Peace; and that he had a Plenipotentiary Commission to treat and conclude, mentioning some of the Conditions he had offered; and therefore desired that they would arm their Ambassadors in *France* to join in the Treaty. This gave his Majesty great Offence, and just Cause to suspect that whatever Pretences *France* had made, it did not at all desire the Peace; and he had the more Reason to complain of this Injury, because there was not the least Colour or Ground of Truth in the Relation, the Earl of St. *Albans* having not any thing like a Commission; nor, as he protested upon this Occasion, (whereof he had likewise taken Notice at *Paris*, and complained before he could have any Advertisement from *England*) had he ever pretended to have the least Power from his Majesty; nor had he ever mentioned any of those Particulars to any Person which were so formally inserted in that King's Letter to the *States*: And his Majesty was the more confirmed in his Belief that *France* would not contribute to the Peace, because they did at this very Time, with equal Passion to *De Witt* himself, oppose the Treaty at the *Hague*; against which they could have no Reason to except, if they had a Mind to the Peace, unless they hoped, by the Trick that is mentioned before, to have got the Treaty to *Paris* by a Commission to the Earl of St. *Albans*; which they had tried all the Ways they could to obtain, and his Majesty had as positively refused to grant, and then resolved to insist on the *Hague*, or upon some Place in *Flanders*, let the Success be what it would.

During this Agitation, an Express was sent over from the Earl of St. *Albans*, with two Papers which he had received from Monsieur *De Lyonne*, and both in his own Hand, which Originals were sent to the King; the one contained a Proposition for the Peace, that there should be no Mention of the Charges of the War, or the Damages received by it on either Side; but that it should be in his Majesty's Choice, whether all Things should remain in the State they were at present, either Side to keep what it had taken, and were possessed of by reason of the War; or that both Sides should come to an Accompt, and either be repaired by the other for the Damages it had sustained; and that after his Majesty had made his Election of those two Particulars, from thence the Peace should be observed between the King and the *Dutch*, according to the last Treaty which had been made at *London* after his Majesty's Return. The other Paper was a Proposition made to his Majesty, that he would promise under his Hand that he would not, during the Space of a Year to come, enter into any Treaty to the Prejudice of *France*, nor give any Assistance against *France* during that Year, this Overture being made about the Beginning of *March*; and in Consideration hereof, the King of *France* would restore the Island of St. *Christopher*'s, which he had newly taken from the *English*, and would undertake that the *Dutch* should consent to the Peace upon the Conditions formerly mentioned; and that the Treaty should be, if his Majesty desired it, at *Dover* or *Canterbury*, since it would not be possible to persuade *De Witt* ever to consent that it should be at the *Hague*; which he looked upon as a Design only to countenance the Party of his Enemies: And at the same time the *States* writ again to the King, and offered to treat at *Dover* or *Canterbury*.

Though his Majesty had, in all his Answers to the *Dutch*, demanded Satisfaction for the Damages he had sustained, and for the Charge of the War; and made little Doubt, if *France* had not entered into that Conjunction, that they would have been induced to have made some Compensation towards it; yet the Case was now altered, and they thought themselves by the new Alliances to stand upon the Advantage Ground, so that his Majesty found any Demand of that kind would not be submitted to; nor, in truth, had the like been insisted upon in any Treaties of this Age, after the longest or sharpest War that had been made. Hereupon, after full Deliberation, his Majesty was well contented to accept of the Propositions made by the King of *France* for the Peace, and made choice of the First Alternative, that both Parties should be contented to enjoy what they had got without any Accompt, the *Dutch* having lost very much more than the *English*; and we having taken from them in *Guinea*, and upon that Coast, more important Places than they had taken from Us: And the Restitution of St. *Christopher*'s by the King of *France*, put his Majesty into the same Condition in his Plantations in the *West-Indies*, as he had been before the War.

When his Majesty thought that all Things upon the Matter had been adjusted, and cared the less where the Treaty should be; and having sent such an Answer into *France* as was punctually agreeable to what had been thence desired; he received another Dispatch from thence, with infinite Excuses, and Protestations of Sincerity, that the *Dutch* had expressly refused to consent to a Peace, except the King would remit and part with the Island of *Polaroone* in the *East-Indies*; an Island which had been formerly taken by the *Dutch* from the *English* with very foul Circumstances, and the Re-delivery whereof was promised by them in their Treaty with *Cromwell*, and again renewed in their last Treaty with the King, and his Majesty had sent Ships thither to receive it; which not being delivered upon Pretence of Want of some Formality in the demanding, it was one of the Grounds of the present War, as an Indignity and Breach of Faith towards his Majesty: though they protested that it was only the Fault of their Governour in those Parts, who for want of an Order from the *East-India* Company, though he did receive the Order of the *States-General*, had not refused, but delayed its Delivery; and that *that*, and all other Orders that could be required, were again renewed, and already sent thither, and they were confident the Place was by that time given up. It was alledged by the King of *France*, that the *Dutch* had always declared to him, in all the Discourses which had been between them of a Treaty, that they would never restore *Polaroone*: And Monsieur *De Lyonne* protested, that he had never known that the Restitution thereof was comprehended in the last Treaty, but conceived that it would fall within the Alternative, if the King should make Choice of that; which he had done, or otherwise would fall into the Accompt: and concluded with a very earnest Desire, that the King would rather yield in that Particular, than break the Treaty for an Island which was nothing worth for the present, nor could be made valuable in less than seven Years; with a Protestation still, that he would do all that was in his Power to persuade the *Dutch* to part with *Polaroone*; but if they should deny to do it, he could not separate himself from them upon that Point, since they had still mentioned it as a Condition: but if his Majesty would yield in that Particular, all Difficulties should be removed, and the Treaty concluded without any new Obstruction. This unreasonable Litigation, and the receding from what had been so fully undertaken before, removed all Confidence from his Majesty of the sincere Intentions of *France*; nor could he foresee what other new Scruples would arise from the one hand, and be admitted by the other. However, after a full Deliberation with his Council upon the whole State of his Affairs, and after having communicated to them all that had passed, he did resolve not to reject the Treaty, but was contented that *Breda* should be the Place; not thinking it fit, for many Reasons, to bring the Treaty to *Dover* or *Canterbury*, to give the Enemy that Advantage if it should prove ineffectual, that it should be broken in his own Dominions; or to make other Advantages by Infusions to the People, who were generally more dissatisfied than they had Reason to be:

And thereupon his Majeſty named the Lord *Hollis*, and Mr. *Henry Coventry* of his Majeſty's Bed-Chamber, for his Ambaſſadors in that Treaty, Men very well qualified for the Service, who were diſpatched to *Breda* as ſoon as was poſſible, which was about the Beginning of *May*; *France* having promiſed, that the Fleet under the Command of the Duke *De Beaufort* ſhould remain in the Port, and that he would uſe his utmoſt Power to diſpoſe the *Dutch*, in the Entrance into the Treaty, to conſent to a Ceſſation, that ſo there might be no more Acts of Hoſtility on either Side, until it might appear what Succeſs the Treaty was like to have towards a Peace: And concerning the Buſineſs of *Polaroone*, he gave them Charge to inſiſt upon the Delivery, and ſent to the *Eaſt-India* Company, who had the ſole Intereſt in that Iſland, to ſend their Deputies to the Treaty, who ſhould be privy to all that ſhould be treated upon that Affair, and who might propoſe or accept whatſoever they thought beſt for themſelves; towards the obtaining whereof, *France* was ſo fully engaged to uſe their utmoſt Interpoſition.

What paſſed during the Treaty is known to ſo many, that I need not mention it here, every Diſpatch from the Ambaſſadors being read and debated at the Council-Board; and when ſuch Difficulties did ariſe that the Ambaſſadors would not take upon them to make any Concluſion without a particular Communication of the Temper, and Diſpoſition, and Reſolution of all the Perſons concerned, they thought fit that one of themſelves (the Lord Ambaſſador *Coventry*) ſhould attend his Majeſty, being obliged to return with his Majeſty's Anſwer within ſo many Days; and as ſoon as he arrived, he gave his Majeſty a full Account, before the whole Council-Board, of all that had paſſed in the Treaty; that the *Dutch* behaved themſelves very inſolently, and that the Authority of *De Witt* was ſo great at the *Hague* with the *States*, that Nobody durſt oppoſe any thing he adviſed; that the *Dane*, by his Inſtigation, had made Demands of a very inſolent Nature; that they believed that the *French* Ambaſſadors had behaved themſelves very well, and done all that was in their Power to do, and had reſtrained the *Dutch* from their Inſolence by Threats and Menaces, which they likewiſe uſed towards the *Dane:* In fine, he read all the Articles which were concluded between them; with all thoſe which remained undetermined and unconſented to, on either Side; with what the *French* Ambaſſadors reſolved to perſuade and reduce the *Dutch* to conſent to yield to, or to declare againſt them in their Maſter's Name. Upon which Report, every particular Article was at large debated at the Board, which took up many Days. The Ambaſſador ſaid, there was not the leaſt Hope of having *Polaroone* reſtored to the *Engliſh*; that they ſaid it was contained in that Alternative which the King had made Choice of; and when it was replied to them, that the Words of that Alternative clearly determined the contrary, for that either Side was to remain poſſeſſed of what they had got by reaſon of the War, which could not be applied to this Iſland, which they had unjuſtly taken and uſurped ſo many Years before; and that they were obliged, by the laſt Treaty, to reſtore it, ſo that the War had no Operation upon that; to this they anſwered, That they had, according to the Treaty, ſent Orders for the Re-delivery of it, and that they believed it had been delivered accordingly; and that, upon the News of the War, their Subjects had re-taken it again, which would bring it within the very Letter of the Alternative: And this our *Eaſt-India* Company was ſo far from contradicting, that they believed it to be true, and had ſhewed me, before the Treaty began, a Letter they had received from one of their Factors in the *Indies*, that there was a Report there, that the *Dutch* had delivered up *Polaroone* to thoſe who were ſent to receive it, and that ſhortly after that they had taken it from them again; and therefore they deſired that a ſpecial Article might be inſerted in the Treaty, whereby the *Dutch* might be obliged to give it up again, if they had in truth ſo indirectly delivered it, that they might again repoſſeſs themſelves of it; which could not but be underſtood to be a plain Violation of their Publick Faith, or a vile Artifice to elude it. The Ambaſſadors replied, That if it had been in truth delivered by them, though ſo indirectly taken, they could not inſiſt upon it, but allow it to be in the Alternative; they deſired only that it might be inſerted in the Article, that if in Truth it had never been delivered, they ſhould be obliged to do what ſo long ſince they ſhould have done. The *Dutch* anſwered, That the End of this Treaty was to eſtabliſh a firm Peace, and therefore they would admit of no doubtful Expreſſions which might create future Diſputes. The Ambaſſadors ſaid, It was very evident, and the *French* Ambaſſadors had acknowledged the ſame to them, that they were reſolved never to part with the Iſland; ſo that there remained no more to be conſidered upon that Particular, but whether, upon the Refuſal of *Polaroone*, the War ſhould be continued. The *Eaſt-India* Company were ſent for to deliver their Opinion; and they very frankly declared, that they believed a Peace to be very neceſſary for the Kingdom, and therefore would not that the War ſhould be continued upon any particular Intereſt of theirs; and it was evident enough, that if the War continued, their whole *Eaſt-India* Trade muſt be deſtroyed, the *Dutch* being ſo much ſuperior in Shipping, and all kind of Strength, in thoſe Parts. Hereupon the King reſolved to conſent to their keeping of *Polaroone*; and I do not know that there was one Man at the Board of another Opinion. To conclude, after a long Debate for ſo many Days upon every Particular, the King reſolved, with the Concurrence of the whole Board (one or two Perſons only excepted), to conſent to the Peace upon ſuch Conceſſions and Proviſions as the *French* Ambaſſadors had obliged themſelves to bring the *Dutch* to conſent to; and thereupon the Ambaſſador returned with full Power, and in a ſhort time after that Peace was concluded and publiſhed. And therefore I cannot underſtand how his Majeſty could be deluded or betrayed in that Treaty, which paſſed with ſuch a full Examination and Diſquiſition; and in all which Debates his Majeſty himſelf had taken the Pains to diſcourſe more, and to enlarge himſelf in the Anſwer of all thoſe Objections which were foreſeen, than I had ever known him to do upon any other Article.

It is very true, that I had been commanded by the King to write moſt of the Letters and Directions which had been ſent to the Earl of St. *Albans* from the Time of his going over, concerning the Treaty, his Lordſhip having (I preſume by the ſame Direction) directed moſt of his Letters to me; and moſt of the Diſpatches to the Ambaſſadors were likewiſe prepared by me, they being by their Inſtructions (without my Deſire or Privity), to tranſmit their Account to one of the Secretaries, or to myſelf: But it is as true, that I never received a Letter from either of them, but it was read intirely in his Majeſty's Preſence to thoſe Lords of the Council, who attended, where Directions were given what Anſwer ſhould be returned; and I never did return any Anſwer to either of them, without having firſt read it to the Council, or having firſt ſent it to one of the Secretaries to be read to his Majeſty; and I can with a very good Conſcience proteſt to all the World, that I never did the leaſt Thing, or gave the leaſt Advice relating to this War, or relating to the Peace, which I would not have done if I had been expiring, and to have given an Account thereof to God Almighty that Minute: And as his Majeſty prudently, and piouſly, and paſſionately deſired to put an End to that War; ſo no Man appeared more delighted with the Peace when it was concluded than his Majeſty himſelf did; though, as far as I could make any Judgment of the Publick Affections, the Publication of that Peace was attended with the moſt univerſal Joy and Acclamation of the whole Nation, that can be imagined: Nor is it eaſy to forget the general Conſternation that the City and the People of all Conditions were in, when the *Dutch* came into the River as high as *Chatham*; and when the Diſtemper in the Court itſelf was ſo great, that many Perſons of Quality and Title in the Galleries and Privy-Lodgings very indecently every Day vented their Paſſions in bitter Execrations againſt thoſe who had firſt counſelled and brought on the War, wiſhing that an End were put to it by any Peace; ſome of which Perſons, within very few Days after, as bitterly inveighed againſt the Peace, and againſt the Promoters of it. But I am ſo far yet from repenting or being aſhamed of the Part I had in it, that I look upon it as a great Honour, that the laſt Service performed for his Majeſty was the ſealing the Proclamations, and other Inſtruments for the Concluſion and Perfection of that Peace, the Great Seal of *England* being that very Day ſent for, and taken from me.

The Seventeenth and laſt Article is, *That I was a principal Author of that fatal Counſel of Dividing the Fleet about* June, 1666.

How far I have always been from giving Advice in the Proſecution of the War either by Land or Sea (except by being preſent at ſome of the Debates) I have at large ſet down before; I never in my Life having pretended, either in the Time when I ſerved his late Majeſty during the War, or in this King's Time, to underſtand any thing of that Affair: But when I have been preſent in Councils of that Nature, I have always governed myſelf by their Opinions who had the greateſt Reputation of Skill in that Profeſſion; and I never preſumed leſs in my Life to give an Advice, than I did in this Particular concerning the Diviſion of the Fleet; and I ſhould make a full Anſwer to this Charge, if I ſhould ſay no more, than that I am not guilty of it. But ſince it hath made ſo much Noiſe, to the Diſadvantage of the King, and of the Conduct of his Affairs, and that no Care hath been taken to inform Men of the whole Carriage in that particular; I will, as I have done at large to the other Articles, for his Majeſty's Honour, and for the Vindication of thoſe of his Council who were preſent in thoſe Debates, (how unjuſt ſoever many of them have been to me) ſet down very particularly all that I know of that Matter, and how the Fleet came to be divided; upon the View of which, I am of Opinion, what Misfortune ſoever attended it, no Man will have Cauſe to be aſhamed of any Fault he committed in it. From the Time that his Majeſty reſolved to ſend Prince *Rupert* and the General with a joint Power and Authority to command the Fleet, there was Cauſe enough to apprehend that there would not have been ſo good an Accord between them as the conducting ſo great a Service required; and I was then thought to have ſo great an Intereſt in both of them, that his Majeſty commanded me to uſe the utmoſt Endeavours to diſpoſe them to a good Underſtanding towards each other; and I believe they will both confeſs, that I performed all the Offices I could, and with ſome Succeſs, to that good End: And I was the more ſolicitous in it, becauſe I found that the Prince was much unſatisfied with the Reſolution his Majeſty had taken, that they ſhould both go in one and the ſame Ship; and that his Highneſs was very deſirous to be in a Ship by himſelf, and even to command a Part of the Fleet upon any Enterprize that ſhould offer itſelf, ſeparated from the other: And there was too general an Opinion, from what Ground I know not, even at the Time when our Fleet was ready, and when the two Generals went to it, that the *Dutch* were not in any degree ready to come out; that the greateſt Ships had not taken in their Proviſions, and that they had not Men enough to man the Fleet; and that they had no Deſign to come out of their Port till the Duke *de Beaufort* ſhould be ready upon the Coaſt to join with them; which Fleet was then at *Breſt*, and in great Readineſs. I had no Part in managing the Intelligence, nor in truth ſo much as a Correſpondence by Letter at that Time, with any Man in *France* or *Holland*. The two Generals were not many Days at Sea, when my Lord *Arlington* informed his Majeſty and my Lords, that he had received Intelligence from a good Hand, that the *Dutch* were in no degree ready to come out with their Fleet; and that the Duke *de Beaufort* on ſuch a Day of the Month had all his Fleet ready, and his Men on Board, to take the firſt Opportunity of the Wind to ſet ſail from *Breſt*; that the Wind had been fair theſe two laſt Days, and therefore that it might be preſumed that he was by that time at Sea, and making his Courſe for *Holland*. Whereupon it was conſulted, whether any Order ſhould be ſent to the Fleet, that Prince *Rupert* with Part of it might bend his Courſe towards *Breſt*, whilſt the General, with the other Part, waited the *Hollanders* Motion. There had been a long Proſpect and frequent Debates upon this Contingency, and how advantageous a thing it

it would prove, if we could have timely Advertiſement of the Duke *de Beaufort*'s Motion, that a Part of the Fleet might be ſent to encounter him before his Conjunction with the *Dutch*; and to that Purpoſe the Lord *Arlington* had taken all the Pains he could to get particular Intelligence of the Motion of that Fleet. When this Intelligence was communicated, ſome were of Opinion that his Majeſty ſhould ſend preſent Orders to the Generals, that Prince *Rupert* ſhould, with ſuch a Number of Ships as they ſhould think fit, bend his Courſe as is before-mentioned. The late Lord Treaſurer and I were preſent at this Debate; and though we ſeldom offered Advice in ſuch Caſes, yet being now both of one Opinion, we did deſire the King, that he would not take upon himſelf to ſend poſitive Orders in an Affair of ſuch Moment, upon an Intelligence that might not be true; though we believed it to be very probable, that the Generals were like every Day to know more of the Motion of the Enemy than we could do: And therefore we humbly offered it to his Majeſty, whether it might not be fit in this Caſe to ſend ſome of the Council then preſent, and who had ſeen the Intelligence, and heard the whole Debate, preſently to the Fleet, to inform the Generals of what his Majeſty had heard, and of the Conſiderations which had been thereupon; and if they had received no Advertiſement to the contrary, and upon Conference together, thought fit to divide the Fleet, and that Prince *Rupert* ſhould ſet Sail in order to engage the Duke *de Beaufort*, his Majeſty would be very well content that they ſhould put that Deſign in Execution, without ſtaying for farther Orders. His Majeſty was pleaſed (with the concurrent Opinion of every Perſon preſent) to approve of this Propoſition; and immediately made Choice of Mr. Vice-Chamberlain, and Sir *William Coventry*, to uſe all poſſible Expedition to find out the Fleet, and inform the Generals of all that had paſſed. I muſt not forget to ſay, that at this Conference, and before the Meſſengers were diſpatched, Mr. Secretary *Morrice* informed the King, that he had received Intelligence very different from what my Lord *Arlington*'s was; which was, that the *Dutch* Fleet was even ready to come out, all their Men being aboard, which was likewiſe commended to thoſe two honourable Perſons to make Part of their Information. The Winds were ſo favourable, that the two Meſſengers went to, and returned from the Fleet with more Speed than could reaſonably have been expected; they reported to the King, that they had imparted all his Commands to the Generals, and that they had had full Conferences together upon it; that by all the Intelligence they had received, they did conclude, that the *Dutch* were not ready to come out; and therefore they thought it very counſellable, that the Prince ſhould endeavour to meet with the Duke *de Beaufort*; and in order to that, they had agreed before their coming away, and had agreed what Ships ſhould attend Prince *Rupert*, and what ſhould ſtay behind with the General, which they reſolved ſhould be executed by ſuch a Time, if they did not receive his Majeſty's Orders to the contrary; which his Majeſty did not think fit to ſend, ſince they were of the ſame Mind, and ſo they ſeparated each from other, as was agreed. I have heard (but I was not then preſent) that upon a more certain Intelligence that the *Dutch* Fleet was come out, Orders were ſent to hinder the Prince from going out; which, if they had been tranſmitted with Care enough, would have come to him in Time: But there being ſome Negligence in that, they came not to him Time enough to return till the ſecond Day of the Engagement; which is ſo well known, that I need not enlarge upon it. And this is all that I know of the dividing the Fleet; in which I do not know that any Man can be juſtly blamed with more Reaſon than all Men may be, whoſe Counſels have not that Succeſs which is deſired; and if there were any Fault committed, I am ſure there is no Colour to impute it to me, nor am I in the leaſt Degree reſponſible for any Conſequence upon it.

I have now, according as my Memory hath been able to ſupply (for I have not any Paper or Note by me for my Aſſiſtance), anſwered every particular Charge againſt me; I hope ſo fully, that, how powerful ſoever my Enemies ſhall be yet able to appear, as they do continue very powerful, all indifferent Men will abſolve me from any Guilt: And though I neither do or can expect any thing of Juſtice or Ingenuity from thoſe Perſons who have by all the evil Arts imaginable contrived my Deſtruction, by infuſing into his Majeſty's Ears Stories of Words ſpoken, and Things done by me, of which I am as innocent as I was when I was born, and other Jealouſies of a Nature ſo odious, that themſelves have not the Confidence publickly to own; yet, I ſay, notwithſtanding all this Diſadvantage for the preſent, I do not doubt but that Poſterity, if not the preſent Age, will clearly diſcern my Integrity and Innocence in all the Particulars which are objected againſt me, and lament my preſent Sufferings, that after ſo many Years of very faithful and painful Service, I ſhould be baniſhed my Country, and forced to ſeek my Bread in foreign Parts at this Age. However, it concerns me very much to wipe off one Reproach which I may ſeem to have brought upon myſelf, by my withdrawing and ſecretly flying out of the Kingdom, to avoid, as it may be thought, the Juſtice of Parliament; which, as it is made the Ground and Foundation of the Act of Baniſhment, ſo I may reaſonably preſume that it hath made deep Impreſſion in the Minds of many worthy Perſons, who were not over-inclined to entertain a Prejudice againſt me, and who, by my withdrawing, may reaſonably believe, that if I were in Truth ſo innocent as I have profeſſed myſelf to be, I would not have declined the moſt ſevere and ſtricteſt Examination of all my Actions, of which I ought to be very ambitious; and that an exact Inquiſition might be made into my whole Life, from which, and from which only, if I am ſo innocent as I pretend to be, I might reaſonably promiſe to myſelf ſuch a full Vindication, as might amply repair me in Point of Integrity and Honour, not only to the Shame of my Enemies, but to my full Reparation for the Damages I have ſuſtained, if I could prove ſuch a groſs Combination and Conſpiracy againſt me as I have ſeemed to accuſe them of: And therefore it concerns me very much to make ſuch a Defence for myſelf in a clear Relation of all the Motives and Circumſtances which prevailed with me at that Time to withdraw myſelf, after I had ſo often rejected all Overtures and Advice to that Purpoſe, and ſo publickly declared that I would rather undergo all the Danger and Ruin which might attend my being brought to a Trial, than to contribute to my own Infamy by endeavouring to decline the Trial: And I hope that when I have made a faithful Narration of all thoſe Reaſons and Motives which obliged, and even forced me to do what I did, I ſhall be thought by all diſpaſſionate Men not only not to have deſerted and betrayed my own Innocence, but to have complied with that Obligation and Duty which I have always paid to his Majeſty, and to his Service; and againſt which I hope, and am moſt confident, that God Almighty will always preſerve me from committing the leaſt Fault or Omiſſion.

When his Majeſty was pleaſed firſt to ſend me an Intimation of his Purpoſe to take the Seal from me, which was by the Duke of *York*, he vouchſafed to uſe all the gracious Expreſſions that can be imagined; the great Satisfaction and Benefit he had received by my Service, the Aſſurance he had of my Fidelity, and that he was confident nothing could be objected againſt me, which I would not be well able to anſwer; but that the Parliament had contracted ſo great a Prejudice againſt me, that if they had ſat but one Day longer before their laſt Adjournment, they would have accuſed me of High-Treaſon, and that he was moſt aſſured that they continued in that Reſolution, and would execute it the firſt Day of their next Meeting; that I well knew the Condition of his Affairs, and how much he depended upon the Houſe of Commons for a Supply of Money, without which he ſhould not be able to ſupport his Government: His Advice therefore was, that I ſhould deliver up the Seal to him out of my own Choice, by which he ſhould be able to protect me from further Inconvenience; and it would be ſo grateful to the Parliament, that he ſhould, in Conſideration thereof, receive all that he could deſire from them. It will eaſily be believed that I was enough ſurpriſed with this Meſſage, it being at a Time when my Mind was broken with the Loſs of my Wife; for which his Majeſty had vouchſafed in his Royal Perſon to condole with me very few Days before, and when my Condition in all Reſpects was in no Degree pleaſant to me: I deſired the Duke that he would procure an Audience for me with his Majeſty; which his Royal Highneſs had not the leaſt Doubt of obtaining, and made as little Doubt but that his Majeſty, in reſpect of my Lameneſs and Indiſpoſition, would be graciouſly pleaſed to come to my Houſe; which his Majeſty the next day promiſed to do; but upon Conference with others, afterwards changed that his gracious Purpoſe, and appointed me to attend him in a Morning in my own Chamber at *Whitehall*, which, being a Ground Room, would not put me to the Trouble of going up Stairs; and thither his Majeſty did vouchſafe to come to me, there being Nobody then preſent but his Majeſty and the Duke. The King received me very graciouſly, with all thoſe Expreſſions which he had uſed to the Duke; and when I aſked him whether he had taken any Offence at my Carriage, and whether I had miſbehaved myſelf in his Service? He ſaid, No, but the contrary, that I had ſerved him very well, and that he believed no Prince had a better Servant; and that the Reſolution he had now taken was for my Good and Preſervation; and ſo enlarged himſelf upon the Reſolution the Houſe of Commons had taken to accuſe me of High-Treaſon, and the Prejudice they had againſt me. I told him, that he might poſſibly be deceived in that Information; and that if he examined it better, he would find that I was not a Man ſo univerſally odious to any Perſons of Power and Intereſt to ſerve him; at leaſt, that my Lord *Arlington* and Sir *William Coventry*, who were my known Enemies, would not be found to be more popular than myſelf; that the Manifeſtation of his Diſpleaſure in this Manner would be ſo far from preſerving me, that it would infallibly expoſe me to the Malice of my Enemies, and was upon the Matter to call for Accuſations againſt me to gratify his Majeſty; and I told him then, as I had done before, that Sir *William Coventry* had taken upon him, upon the Day of the laſt Prorogation, to offer ſome leading Men of the Houſe of Commons, that the Chancellor ſhould be ſacrificed to them, if that would content them. His Majeſty told me, That he knew much more of the Combination that was againſt me than I did; and that he was moſt aſſured, that if I were not removed before the Parliament met, it would not be in his Power to preſeve me; but if I voluntarily gave up the Place, and withdrew into the Country, he would undertake I ſhould not receive the leaſt further Trouble. I told him, the Seal was in his own Diſpoſal, he might take it when he pleaſed; but that I would not bring the Reproach upon myſelf, by voluntarily giving it up, that I deſerted his Service at a Time when ſome Men would believe that I might be of ſome Uſe to him. His Majeſty ſeemed to be reſolved upon the Matter, but diſmiſſed me with many gracious Expreſſions of his good Opinion; which he continued long after to do to thoſe Perſons, who of themſelves taking Notice of this Diſcourſe in the Court, preſumed to ſpeak to his Majeſty, and to diſſuade him from proceeding in that Manner towards me; as the Archbiſhop of *Canterbury*, the Lord General, the Earl of *Bridgwater*, and others; to all whom his Majeſty mentioned me as a Perſon of whoſe Affection and Integrity to his Service he had an unqueſtionable Aſſurance: And I do in Truth believe, that his Majeſty at that Time had been perſuaded to believe that my Removal was neceſſary for his Service, and had in himſelf no Diſpleaſure towards me, in order to any further Proſecution.

As ſoon as the Seal was taken from me, and delivered to the King, I heard that Mr. *May* had kiſſed the King's Hand, and told him he was then King of *England*, and never before; and then every Day my Enemies declared their Animoſities againſt me; and Sir *William Coventry* declared publickly in all Places, that he had adviſed the King to remove me, as a Thing upon which his Welfare depended: My Lord *Arlington* had perſuaded the Duke of *Buckingham*, that I had been the ſole Perſon who had contrived the Proſecution that had been lately againſt him; whereas, in Truth, I had never heard any thing of it till the King told it me, and the Lord *Arlington* brought me the Examinations which had been

been taken, and assured me there would be much more proved against him; upon which I gave such Advice as my Duty obliged me to do: but so far was I from Malice towards the Duke, that I did him all the Offices I could with the King, and contributed at least as much as any Man, as soon as I found by the Lord *Arlington* that some of the Witnesses were dead, and that the Proofs would not make all that good which he had pretended; but the Duke of *Buckingham* was informed that I was the only Cause of his Suffering, and thereupon inveighed against me with his usual Bitterness.

As soon as the Parliament came together, it quickly appeared that my Enemies had so far prevailed with his Majesty as to declare his own Displeasure against me, and against all those who appeared to have no ill Opinion of me; and then nothing was spoken so much of as the Resolution to take my Life; and the Lady *Castlemain* declared that the Duke of *Buckingham* was to sit Lord High Steward of *England* upon my Trial, many Wagers being laid in the Court that I should lose my Head; and Sir *Thomas Osborn*, a Person of great Intimacy with the Duke of *Buckingham*, had declared in the Country, before his coming up to the Parliament, that if the Chancellor were not hanged, he would be hanged himself. All which unusual Proceedings did not in the least degree terrify me; only the Manifestation of the King's so great Displeasure against me (for what Cause God of Heaven knows, I cannot to this Day imagine) did afflict me as it ought to do: Upon which I writ to the King, beseeching him not to give Ear to the Reports raised by my Enemies; but to let me know in what I had offended him, and to beseech him to be satisfied with the Disgrace and Damage I had already received.

From the Beginning of the Prosecution in Parliament against me, some Persons who wished me very well, and were well informed of the severe Intentions against me, earnestly advised me to withdraw myself, and thereby to provide for my Security; which I utterly refused to do. And it is well known, that the Day when the House of Commons sent up their General Impeachment of High-Treason against me, that my Coach was ready, and waited three or four Hours to carry me to the House, I expecting to be sent for till the Rising of the House. When the Debate grew so hot in the House of Peers, and that after many Expostulations from the House of Commons, the House of Lords still refused to commit me to Prison, I received new Importunities from my Friends to make my Escape; and they were persuaded by some who had had the greatest Hand in contriving my Ruin, to believe that it would be grateful to the King, and that there should be no Means used to obstruct my going away: And when nothing of this could work upon me, the Bishop of *Hereford* (who had not carried himself so well towards me as some Men thought I had deserved from him) first sent to the Bishop of *Winchester*, to persuade him to get me out of the Kingdom; and confessed to him, that it was the King's Desire, though he would not own it to any body else: and then came to me himself, pressing the same Thing to me; and undertook, upon his Salvation (which was his own Expression), that I should neither be stopped in my Passage, nor suffer in the least Degree in my Honour or my Fortune by my Absence; which he said I could not believe he would undertake without very good Authority: and thereupon enlarged upon the Calamities the Kingdom must suffer by this Difference between the two Houses, of which I should be looked upon to be the sole Cause, and therefore had Reason to apprehend what Sense the People were like to have of it; and Mr. *Seymour* had the Confidence to tell a Noble Lord of the House, who had vigorously opposed my Commitment, that if the House of Peers did not comply with the House of Commons, the People would not only pull down my House, but the Houses of all those Lords who adhered to me. I told the Bishop, I was very innocent in all Things laid to my Charge, and therefore I was not to be terrified by any Threats; however, if it were thought fit for his Majesty's Service that I absented myself, I would, without any Consideration, how far I might suffer in Point of Reputation, submit to his Majesty's Direction; only I desired that I might have such a Pass as might secure me from being stopped, and exposed as a Spectacle to the People, and as a Man running away from Justice; which the Bishop thought I might reasonably require, and made no Doubt of sending it me accordingly: But the next Morning he told the Bishop of *Winchester*, that if the King should grant such a Pass, it might give great Offence to the Parliament, which Hazard his Majesty would not run, but renewed all the Assurances he had before given for the Security of my Passage: And I as positively refused to accept thereof; and so continued in my House, and spoke every Day publickly with many Persons a full Week after the Time that the Bishop had been with me, notwithstanding the daily Advice and Importunity I received from my Friends and nearest Relations to withdraw.

It pleased God that the Duke of *York* had been for some Weeks sick of the Small-Pox, so that Nobody had spoken with him of any Business for the Space of near a Month; but the Malignity of the Disease being spent, his Majesty himself had, upon the last *Friday* in *November*, visited his Royal Highness; and saying little more then, than in congratulating his Recovery, and expressing his own great Joy in it, he came again to him the next Morning early, and had some private Conference with him. And the King no sooner departed from him, but the Duke bid his Wife send presently to me, and conjure me presently to be gone; that she should let me know that it was absolutely necessary for the King's Service; and that I might be very confident and secure, that I should meet with no Obstruction in the Way, nor undergo the least Damage in my Honour or Fortune by being gone. And upon this Authority and Command I did the same Night, on *Saturday* the last of *November*, one thousand six hundred sixty and seven, leave my own House, and went by Coach to *Erif*, where I embarked; and it pleased God, after four Days struggling with ill Wind and Weather, I arrived at *Calais* the *Wednesday* following. And I did no more in this Adventure, whatever Prejudice I have undergone by it, than I shall always do, in sacrificing my Honour, and my Life itself, upon the least Intimation of his Majesty's Pleasure, and whenever he thinks his Service may be advanced by it. And if any Man shall yet think, notwithstanding all that I have said, that I ought not to have withdrawn myself, but to have remained there in Prison, or any other Condition they would have put me in, until I had been fully cleared upon a fair Trial; he will, I hope, have so much Compassion of me, as to think I had great Difficulties to contend with, and will lament, on my Behalf, that I am forced to undergo so hard a Fate, after the Age of Threescore Years, whereof Thirty have been spent in the Service of the Crown; and for the Prosperity whereof, and the Happiness of his Majesty's Royal Person, my daily Prayers shall be poured out, in what Condition soever I am in, and in what Corner of the World soever I shall be confined or condemned to.

NUMBER XII.

The Proceedings before the Lords of the Articles, &c. *against* CHARLES MAITLAND, *of* Halton, *Treasurer Depute, for Perjury, in having given a false Testimony, at the Trial of* James Mitchel *.

A PARLIAMENT being summoned and holden at *Edinburgh* the 28th Day of *July*, 1681, by his Royal Highness, the King's High-Commissioner, on the —— Day of ——, *William Noble*, of *Denotter*, did deliver the following Petition, or Accusation, into the Hands of the Lord Register, to be by his Lordship presented to his Royal Highness, and the Lords of the Articles.

To his Royal Highness, his Majesty's High-Commissioner, and the Right Honourable the Lords of the Articles,

It is humbly represented,

THAT, Whereas the deceased Mr. *James Mitchel* being convened before the Justices, for attempting to assassinate the late Archbishop of St. *Andrews*, and his Confession before the Duke of *Lauderdale*, his Majesty's Commissioner for the Time, and the Lords of the Privy-Council, being adduced *in modum Probationis*, against him, the said Mr. *James* proponed this Defence, that his Confession was emitted upon Promise and Assurance of Life made to him; for proving whereof, he did adduce *Charles Maitland*, Lord Thesaurer-Depute, as a Witness, who deponed negative, notwithstanding that by Letters under his Hand, directed to the late Earl of *Kincardin*, he expresly writes, *That the said Mr.* James *had confessed upon Assurance made to him of his Life.* And *that he now thought that his Punishment would be the Loss of his right Hand*, which Perjury will be clearly proven by Production of the said Letters and Deposition; for which is humbly craved, a Warrant may be granted against the Havers for Exhibition of the same, and that the Lord Thesaurer-Depute may be declared infamous, and suffer the other Pains appointed by Law in such Cases.

Sic Subscribitur,

W. NOBLE.

The Letters which the Petition refers to, and upon which the whole Accusation is founded, are these two that follow, both sent to my Lord of *Kincardin*.

Holyrood-house, 10 *Feb.* 1674.

" THIS Afternoon yours came, which should have come this Morn-
" ing, so that the Post is now more regular.

" I read it all, and it is a full Account of all Passages: I hope shortly
" we may find Matters grow better, and indeed there is great Need of
" it here, for at present we are out of Joint. *Saturday* last, in the Morn-
" ing, Information was given, That one Mr. *James Mitchel*, who was
" alledged to have shot at the Archbishop of St. *Andrews*, was discovered
" by —— and Sir *William Sharp*, and being seen to come down Sir
" *William*'s own Close, by Sir *William*, and two of his Brother's Foot-
" men, he called to *Mitchel*, and carried him back to his House (the
" Signet-Office). He had a long Iron Pistol, and a short Sword about
" him, in Shoes and Stockings; and though he was so armed, yet he
" did not resist, though none came up to him, but Sir *William* alone,
" till he came up his Stair. Being asked his Name, he denied it, and
" varied in several others of his Answers; and by Warrant of the Chan-
" cellor, was committed close Prisoner. This Day he was examined by
" Order of Council, by the Chancellor, Register, Advocate, and me: The
" Commissioner had ordered us to charge him with his being in the Re-
" bellion, and that he was excepted by Name out of the Act of In-
" demnity, and so let him see his Condition, to be led to Execution:
" This was done very soon, and against his next Examination he con-
" fessed his being with the Rebels, but denied this Assassination of the
" Archbishop, yet acknowledged his being in Town at that Time, and
" that the Pistol he was taken with he had bought at that Time; so it
" was moved by one, That the Chancellor might take him apart, to see
" what he would then say: This being done, upon Assurance of Life, he

* This should be read after *Mitchel*'s Trial, Vol. II. Pag. 636.

" fell

" fell upon his Knees, and confeſſed it was he that ſhot the Biſhop of " *Orkney*, and which he aimed at the Archbiſhop; and here is his Con- " feſſion, the Double of it ſigned by him, the Chancellor, and us. " His Puniſhment, it is thought, will be the Loſs of his Right Hand, " and condemned to perpetual Impriſonment in the Baſs. I think I " told you before, that his Grace had retrenched his Allowance to ten " Pounds Sterling a Day, ſince the 20th; though his Charge be little " retrenched, for his Table holds yet 24 Perſons. I hope, when Matters " are over, you will give us ſome Account of his Majeſty's Pleaſure " about the Miners Affairs, wherewith ye know their Friends have been " ſufficiently reproached, without any Shadow of Reaſon. And ſo, my " Good Lord, Adieu.

Holyrood-Houſe, 12 *Feb.* 1674.

" THIS Day, Mr. *Mitchel*, who aſſaſſinated the Archbiſhop of St. " *Andrews*, was again examined in Face of the Council, and ſaid " nothing but what he ſaid to us of the Committee: He is remitted to " the Juſtice Court, to receive his Indictments, and Sentence, to have " his Right Hand cut off at the Croſs of *Edinburgh*, and the Forfeiture of " his whole Goods and Poſterity. This laſt Part is not to be put in Exe- " cution till his Majeſty be acquainted, becauſe Aſſurance of his Life " was given him upon his Confeſſion. The cutting off his Hand is to " be executed by the Hand of the Hangman."

The Depoſition which is pretended to be contradictory to what is delivered here in theſe two Letters, from whence Perjury is inferred, is in Vol. II. Page 634.

This Petition being read, the Lord Treaſurer Depute deſired that he might have it delivered to him in common Form, and might have Liberty to put in his Anſwer to it; and became further an humble and earneſt Suitor to their Lordſhips, that he might be put to a ſpeedy Trial, whereby he might make his Innocence appear to the Parliament, and the whole World, which his Royal Highneſs, and the Lords of the Articles, were pleaſed to grant; not becauſe they found any thing in the Accuſation relevant againſt him, but that they might gratify his Lordſhip's earneſt Deſire, of being put upon his Trial. Afterwards, *William Noble* was called in, who owned his Accuſation, and did again ſign it in Preſence of his Royal Highneſs, and Lords of the Articles; and being aſked by the Preſident of Parliament, the Marquis of *Atholl*, if he knew the Lord Treaſurer-Depute, or was acquainted with him? He anſwered, No: Being then interrogated how he came to accuſe his Lordſhip upon the Head of Perjury? Or whether it did fall within his proper Knowledge? Or whether he did ever ſee the Lord Treaſurer Depute's Letters, or Depoſition? He replied, No; but that he was ſo informed, and that he was induced to do it as a Member of Parliament: And being thereupon aſked, Who he received his Information from? He refuſed to make any Reply to that Queſtion.

Preſently after this, the Lord *Halton* put in his Anſwer to the Information exhibited againſt him, which is as followeth:

" WHEREAS it is repreſented, That Mr. *James Mitchel*, in his " Trial, having alledged that his Confeſſion was emitted upon " Aſſurance of Life, and having adduced the Treaſurer-Depute as a " Witneſs in his Exculpation for proving the ſame, he deponed Ne- " gative, notwithſtanding, by a Letter under his Hand to the Earl of " *Kincardin*, he aſſerts, that he had confeſſed upon Aſſurance of Life; " which he offers to prove by the Miſſive Letter now produced, and " therefore concludes, that the Treaſurer-Depute is guilty of Perjury, " and ought to be declared infamous, and ſubjected to other legal Penal- " ties thereanent.

" It's anſwered, that this Accuſation is neither relevant nor proven, " for as to the Relevancy, Perjury being a high Crime, is not to be pre- " ſumed againſt any Man, much leſs a Perſon of ſo high Quality and " Office, except the Deeds inferring the Perjury were of Knowledge, " and directly contradictory; and to infer Perjury muſt not only be De- " poſition, contradicting another Depoſition which is upon the Matter " falſe, becauſe a Man may depone an Error, *bona fide*, through Forget- " fulneſs; but Perjury muſt be a falſe Depoſition againſt one's Know- " ledge; and ſo he muſt be *Sciens & volens*. So that two Oaths, after the " Interval of four Years (which is the Diſtance between the Letter and " Depoſition), ſuppoſe they had contradicted, yet, in Charity, a Perſon " of entire Fame might be excuſed from Perjury; but where the Con- " tradiction is only alledged, betwixt a tranſient Miſſive Letter of News, " and an Oath emitted four Years after the Date of the Letter, no ra- " tional Man can think, that albeit theſe did contradict, it could infer " Perjury, but only an Error or Miſtake in the Miſſive Letter, and the " writing of a Miſſive upon Miſtake or Deſign, though it were produced " to a Party, when he is called to depone; if he were convinced that he " had been miſtaken in his Miſſive, he behoved to depone according to " his Knowledge, and the Truth, though that contradicted his Letter, " which can never infer the leaſt Inſinuation of Perjury, ſuppoſe the " Letter had been obligatory and ſerious; whereas this Letter was only " an overly indigeſted Account of News, and unſubſcribed.

" 2. As the Accuſation is no ways relevant, ſo it is not at all proven; " becauſe both the Letter and the Oath are conſiſtent, in ſo far as " *Mitchel* being examined before a Committee of the Council, in the " Treaſury-Chamber, he did deny the Attempt of aſſaſſinating the Pri- " mate; but thereafter, the Chancellor having retired with him to the " Council-Chamber, after a little Time, they did return, and *Mitchel* " did confeſs the Attempt before the Committee, and ſome Days after, " reiterated that Confeſſion before the Council; and it was generally " reported, and until the Chancellor deponed the contrary, it was uni- " verſally believed, that the Chancellor had given him Aſſurance of Life " privately: But it neither is probable that Aſſurance was promiſed by " the Committee or Council, nor did Mr. *James Mitchel* aſſert it in his " Trial, and therefore the univerſal Report, that Aſſurance was given " privately, was a ſufficient Foundation for the Treaſurer-Depute's " Letter; but when he came to be examined in the Exculpation, whe- " ther he heard Aſſurance given him, ſuppoſe he had all the Grounds of " Credibility, yet he could not depone that he heard Aſſurance given, " except he had been Ear-Witneſs to the Promiſe; and by this Letter " that appears impoſſible; for it bears, That it was moved, that the Chan- " cellor and *Mitchel* ſhould retire, and this being done, upon Aſſurance " he confeſs'd; ſo that the Aſſurance related in the Letter, was not " given in the Committee, or where the Treaſurer-Depute was preſent, " but where the Chancellor had retired with *Mitchel* in the Council- " Chamber: And the Treaſurer-Depute is ſo cautious in his Depoſition, " that he reſtricts it to two preciſe Times, *viz.* When *Mitchel* confeſs'd " in the Committee, and when he renew'd his Confeſſion before the " Council; and he depones, That being preſent at theſe two Times, he " heard neither Aſſurance aſk'd nor offer'd; ſo that albeit, at any other " Time, Aſſurance had been given him, it doth not at all contradict the " Oath: And it had been Perjury, if the Treaſurer-Depute had deponed " Affirmative, though he had heard the general Surmiſe, or though this " Letter, written upon the Faith of that Report or Rumour, had been in " his Hand. And in this Caſe, the Treaſurer-Depute's Depoſition being " a concurring Teſtimony with ſeveral other Perſons of the greateſt " Eminency, Truſt, and Integrity, in this Kingdom, ſome whereof " deponed in relation to their proper Fact, and who were only pretended " to have given the Aſſurance, his Oath can never be ſuſpected, with- " out the greateſt Reflection upon the conſiderableſt Part of the King's " Principal Miniſters.

" From all which, it is evident that this Accuſation is a moſt unjuſt, " calumnious, and ſcandalous Libel, to which the Accuſer hath been " hounded out, tending to diminiſh the Confidences of the Lieges and " Subjects to his Majeſty's Officers of State, and thereby wounding his " Majeſty's Authority, and weakening his Government by ſuch preſump- " tuous Attempts againſt his Miniſters: And it is humbly hoped and " expected from his Royal Highneſs, and the Lords of the Articles, that " ſince the Letter founded upon doth not, in the leaſt, inſtruct the irre- " levant and illegal Accuſation, which is only probable by Writ, accord- " ing to our Law; that therefore the Treaſurer-Depute may be vindi- " cated and aſſoilzied from this falſe and infamous Libel; and that the " Calumniator may be puniſh'd, by being declared infamous, and " otherwiſe in his Perſon and Goods, according to the Demerit of his " Crime, and to the Terror of others."

This Anſwer being given in by my Lord *Halton*, it was ſo full and clear, that unleſs ſome other Trick were found out, the Lords of the Articles could not but immediately proceed to give their Judgment in favour of his Lordſhip; Mr. *Noble*, therefore, who had before reſtrain'd his Proof of the Accuſation to thoſe two Letters written to my Lord of *Kincardin*, and to which the Anſwer referr'd, that he might buoy up his ſinking Cauſe as long as he could, was pleaſed (by a ſecond Petition) to deſire that Witneſſes might be ſummon'd in, and the Regiſters of the Council and Juſtice Court produced to prove the Contents of his Accuſation; and the Treaſurer-Depute ſtill preſſing for a fair Trial, the Articles, before they would give Anſwer, allowed him to condeſcend upon all the Sederunts of Council, and all the Members of Council at that Time, when *Mitchel* was examin'd at ſeveral Diets, and craving further, ſeveral other Witneſſes to be examin'd, and the ſaid Regiſters to be produced. This being again conſider'd by the Articles, the Treaſurer-Depute begg'd Leave to anſwer for himſelf, and for his Defence ſaid;

" 1. That in Law, no Man's Letter can invalidate his Oath, even " though it contradict his Oath, but that his Letters are conſiſtent with " his Oath, being diverſly related, and to divers Times and Circumſtances.

" 2. That *Noble*'s Accuſation having reſtricted the Manner of Proof " to *Halton*'s Letters only, he could not now reſile from that, without " giving in a new formal Accuſation againſt him: And though the Senſe " of his own Innocence had induced him to preſs a legal Trial, yet he " could not conſent to ſuffer his Accuſer to ſhift himſelf off, by propo- " ſing new and illegal Methods of Probation, to procure Delay.

" 3. That the Crime of Perjury could not be inferr'd but by contra- " dictory Oaths, which could not be alledged againſt him in this Caſe.

" 4. That the Crime of Perjury, by the Law of *Scotland*, was not pro- " bable, nor could be proven by Witneſſes, but by Writ only, and that " eſpecially by Oaths contradicting one another.

" 5. That in this Caſe, his Oath did conclude that he did not hear " *Mitchel* aſk Aſſurance of Life, or any Perſon give it him, and that " therefore no Witneſs could ſwear, that *Halton* heard the Aſſurance " given to *Mitchel*, unleſs his Ears had been fix'd in that Witneſs's Brain, " which is impoſſible; and unleſs they ſwore ſo, it would not prove this, " or any Crime againſt him; and though it were poſſible to prove he heard " Aſſurance given, yet, after ſo long Time, he might have forgot.

" 6. The Treaſurer-Depute was a concurring Witneſs with the late " Chancellor, the late murthered Archbiſhop of St. *Andrews*, the Duke " of *Lauderdale*, and the Now Biſhop of *Edinburgh*; and though Wit- " neſſes were allowable in this Caſe, as they were not, yet they cannot " be led againſt theſe Perſons deponing with him in *Mitchel*'s Trial, who " are either dead or abſent: Beſides that, what they might be preſumed " to ſwear, be what it will, would rather rake into the Graves and Aſhes " of thoſe noble Perſons, now dead, than militate any thing againſt the " Treaſurer-Depute.

" 7. As to any Regiſter craved to be produced, that can operate no- " thing, unleſs they contain Papers ſign'd by the Treaſurer-Depute, and " muſt be Oaths contradictory, and which ought particularly to be con- " deſcended upon, and are not ſo much as alledged; and if they were, " Mr. *Noble* may get Extracts, as other Subjects do. But however, he ſub- " mitted himſelf to his Royal Highneſs, and their Lordſhips Determina- " tion."

Upon this his Royal Highneſs, and the Lords of the Articles, having fully conſider'd the Accuſation, and the Letter, upon which it is founded, and alſo the Lord Treaſurer-Depute's Anſwers, and his Depoſition, concurring with the Depoſitions of the Lord Chancellor, Archbiſhop

of St. *Andrews*, and Duke of *Lauderdale*, His Royal Highneſs was pleaſed to ſay in the Articles, that he did not ſee how he, being the King's Commiſſioner, could give Way to any ſuch Accuſation againſt one of his Majeſty's Servants and Officers of State, or that any ſuch Matter ſhould come to a Trial, unleſs it had been the Treaſurer-Depute's own earneſt Deſire: And that now their Lordſhips having ſeen and conſidered the whole Matter, it was fit for them to conſider what was to be done. Whereupon, the Lords of the Articles declared their Senſe of the Treaſurer-Depute's Innocence in this Crime of which he was accuſed; and they did humbly offer to his Royal Highneſs, that he would be pleaſed to tranſmit the whole Affair to his Majeſty, and ſubmit the ſame to his Royal Conſideration; to the End his Majeſty might declare his Royal Pleaſure, both for the Treaſurer-Depute's Vindication, and puniſhing the Accuſer according to the Pains uſually by Law inflicted in ſuch Caſes.

What follows is the Copy of *Mitchel*'s two Confeſſions.

Edinburgh, 10 *Feb.* 1674.

In the Preſence of the Lord Chancellor, the Lords Regiſter, Advocate, and Treaſurer-Depute.

MR. James Mitchel *being call'd before the Committee, and examin'd as to his Acceſſion to the Rebellion in the Year* 1666, *acknowledges he was in that Rebellion, and join'd with them at the Burgh of* Air, *and ſtay'd with them until the Night before* Pentland, *at which Time, at the Deſire of Captain* Arnot, *he came into* Edinburgh, *to ſpeak with one Mr.* James Sterline, *and Mr.* Robert Ferguſon, *and the Laird of* Penzerie, *who were then in* Edinburgh, *anent an Addreſs to be given in to the Council, in Behalf of thoſe in the Rebellion, declares he was in* Edinburgh, *and ſtay'd in the Houſe of* Griſſel Whytford, *in the* Cannon-Gate, *before he went out; and having Notice from Col.* James Wallace, *Capt.* Arnot, John Lindſay, *and one* William Young, *from whom he brought a Horſe, went out of* Edinburgh, *about Eight o'Clock at Night, and immediately rode towards* Air, *and join'd with thoſe that were there in the Rebellion. Declares, that it was in the Houſe of one Widow* Robiſon *in* Currie's Cloſe, *that he ſpoke with* Penzerie.

Sic Subſcribitur,
James Mitchel.

Rothes.
A. Primroſe.
Jos. Niſbet.

Edinburgh, 10 Feb. 1674.

IN Preſence of the Lord Chancellor, Lords Regiſter, Advocate, and Treaſurer-Depute, Mr. James Mitchel, *Priſoner, being call'd, did freely confeſs he was the Perſon who ſhot the Piſtol at the Archbiſhop of St.* Andrews, *when the Biſhop of* Orkney *was hurt thereby, in the Year* 1668. *And depones upon Oath, That no living Creature did perſwade him to it, or was upon the Knowledge of it.*

Sic Subſcribitur,
James Mitchel.

Rothes.
A. Primroſe.
Jos. Niſbet.
Ch. Maitland.

It is certain, that Mr. *Noble* had, by the Advice of his own Friends, without the Knowledge of my Lord *Halton*, ſubſcribed a Paper, wherein he renounced and retracted his Accuſation, and that he had ſhewn the ſame to *John Campbell*, of *Succoch*, Commiſſioner for *Argyle-Shire*, after it was ſubſcribed by him before Witneſſes. He, at firſt, was pleaſed to think fit to deny it, but being immediately confronted with the ſaid Mr. *Campbell* before the Articles, he then confeſſed he had ſhewn that Paper ſubſcribed by him to that Gentleman; by which a Man may eaſily conjecture at the Nature of both his Accuſation and Accuſer.

NUMBER XIII.

An Account of the digging up of the Quarters of WILLIAM STAYLEY, *lately executed for High-Treaſon, for that his Relations abuſed the King's Mercy (a).*

WHEREAS *William Stayley*, being found Guilty of High-Treaſon, at the *King's-Bench* Bar, on *Thurſday* the 21ſt Day of *November*, 1678, received then his Sentence, to be drawn on a Sledge to the Place of Execution, there to be hang'd by the Neck, cut down alive, his Quarters to be ſever'd, and diſpoſed of as the King ſhould think fit, and his Bowels burnt; which Sentence, on *Tueſday* next following, was accordingly executed at the common Place of Execution, and his Quarters were brought back, and left at *Newgate*, in order to their being ſet up on the Gates of the City of *London*, and his Head on *London-Bridge*, as Traitors Quarters uſually are. But the ſaid *William Stayley* having behaved himſelf very penitently, from the Time of his Conviction until the Time of his Execution, which was atteſted by the ſeveral Miniſters that viſited him during that Time: And the Relations of the ſaid *William Stayley* humbly petitioning his Moſt Sacred Majeſty, that he would be graciouſly pleaſed, that his Quarters might be delivered back to them, to be privately buried, and not to be ſet up on the Gates of the City: Which his Moſt Sacred Majeſty, out of his Princely Clemency and Compaſſion, was pleaſed to grant, and ordered the Sheriff of the County of *Middleſex* to deliver the Quarters to his Friends, by them to be diſpoſed of as aforeſaid; which were delivered accordingly. But ſince that, (to the great Indignity and Affront of his Majeſty's Mercy and Favour) the Friends of the ſaid *Stayley* cauſed ſeveral Maſſes to be ſaid over his Quarters, and uſed other Ceremonies, according to the Manner of the Church of *Rome*, and appointed a Time for his Interment, *viz. Friday* the 29th of *November*, 1678, in the Evening, from his Father's Houſe in *Covent-Garden*, at which Time there was made a pompous and great Funeral, many People following the Corpſe to the Church of Saint *Paul*'s, *Covent-Garden*, where he was buried; which his Majeſty hearing of was juſtly diſpleaſed, and commanded the Coroner of the Liberty of *Weſtminſter* to take up the Body of the ſaid *William Stayley*, and delivered it to the Sheriff of the County of *Middleſex*, and that the ſaid Sheriff ſhould cauſe the Quarters to be ſet up on the Gates of the City of *London*, and his Head on *London-Bridge*. The Coroner, according to his Majeſty's Command, did immediately go to the Churchwardens of Saint *Paul*'s, *Covent-Garden*, and cauſed the Body of the ſaid *William Stayley* to be taken up, and the Coffin to be broken open, to ſee that he had the right Body, which when he had done, he cauſed the Body to be carried to *Newgate*, and there delivered it to the Sheriff of *Middleſex*, to be diſpoſed of as aforeſaid.

William Scroggs.

Imprimatur November 30, 1678.

NUMBER XIV.

Mr. IRELAND *and Mr.* GROVES *were carried on the 24th of* January, 1678-9, *to* Tyburn, *where Mr.* IRELAND *made this following Speech (b).*

WE are come hither, as on the laſt Theatre of the World, and do therefore conceive we are obliged to ſpeak.

Firſt then, We do confeſs, that we pardon all and every one whatſoever, that have any Intereſt, Concern, or Hand in our Death.

Secondly, We do publickly profeſs and acknowledge, that we are here obliged, if we were guilty ourſelves of any Treaſon, to declare it; and that, if we knew any Perſon faulty therein, (although he were our Father) we would detect and diſcover him; and as for ourſelves, we would beg a Thouſand and a Thouſand Pardons, both of God and Man: But ſeeing we cannot be believed, we muſt beg Leave to commit ourſelves to the Mercy of Almighty God, and hope to find Pardon of him through Chriſt.

As for my own Part, having been twenty Years in the Low-Countries, and then coming over in June *was Twelvemonth, I had return'd again, had not I been hinder'd by a Fit of Sickneſs. On the third of* Auguſt *laſt I took a Journey into* Staffordſhire, *and did not come back to Town before the fourteenth of* September, *as many can witneſs; for a Hundred and more ſaw me in* Staffordſhire; *therefore, how I ſhould in this Time be acting here Treaſonable Stratagems, I do not well know or underſtand.*

Here Mr. Sheriff adverti ſed the Priſoner, he would do well to make better Uſe of his Time, than to ſpend it in ſuch-like Expreſſions, for no Body would believe him; not that they thought much of their Time, for they would ſtay; but ſuch kind of Words did arraign the Proceedings of the Court, by which they were tried.

Wherefore Mr. *Ireland* concluded, and ſaid; *I do here beg of God Almighty to ſhower down a Thouſand and a Thouſand Bleſſings upon his Majeſty, on her Sacred Majeſty, on the Duke of* York, *and all the Royal Family, and alſo on the whole Kingdom. As for thoſe Catholicks that are here, we deſire their Prayers for a happy Paſſage into a better World, and that he would be merciful to all Chriſtian Souls. And as for all our Enemies, we earneſtly deſire that God would pardon them again and again, for we pardon them heartily, from the Bottom of our Hearts; and ſo I beſeech all good People to pray for us and with us.*

Then Mr. *Groves* ſaid;

We are innocent; we loſe our Lives wrongfully; we pray God to forgive them that are the Cauſers of it.

Pickering was reprieved 'till the Ninth of *May*, 1679, at which Time he was alſo executed. Arriving at the Place of Execution, he appear'd to the Spectators (after a Manner very unuſual to Perſons in his Condition) with a Countenance not only calm, ſweet, and ſerene, but even chearful, ſmiling, and pleaſed; ſolemnly proteſting upon his Salvation, He was innocent in Thought, Word, and Deed, of all that was laid to his Charge. Then heartily praying for his Accuſers and Enemies, he ſaid to the Hangman, *Friend, do thy Office*; and ſoon after, quietly left the World.

(a) To be read after his Trial, in Vol. II. Pag. 656.

(b) To be read after their Sentence, in Vol. II. Pag. 720.

NUMBER XV.

An Account of (*together with*) *the Writing itſelf, that was found in the Pocket of* Lawrence Hill, *at the Time he and* Green *were executed* (Friday, *the 21ſt of* February, 1678-9), *for the Murder of Sir* Edmundbury Godfrey, *Knt.* (*a*)

'TIS very fit the World ſhould have ſome Account of what was ſaid at the Execution of theſe Men, and how they came to ſay what they did.

Their Confeſſion (as 'tis called) was a Denial of the Fact, which was penned and prepared in a very formal Manner, and taken out of the Pocket of *Hill*, who had neither Pen, Ink, nor Paper, all the while he was in *Newgate*; yet, after he was dead, Captain *Richardſon*, the Maſter of *Newgate*, ſaw the Executioner take it out of his Pocket; which is *Verbatim*, as follows.

I NOW come to the fatal Place where I muſt end my Life, and I hope with that Courage that may become my Innocence: I muſt now appear before the Great Judge, who knows all Things, and judges rightly; and I hope it will be happy for me, a Sinner, that I am thus wrongfully put to Death. I call God, Angels, and Men, to witneſs, that I am wholly ignorant of the Manner, Cauſe, or Time of the Death of Juſtice *Godfrey*; altho', on that Account, by the Malice of wicked Men, brought to this ſhameful Death, which, I hope, will give me a ſpeedy Paſſage to eternal Life: In this Hope I die chearfully becauſe of my Innocence, and the Benefit of the precious Wounds of my bleſſed Saviour, by whoſe Merits I hope for Salvation. I die a *Roman Catholick*, deſiring all ſuch to pray for me: And I beſeech God, in his Juſtice, to diſcover this horrid Murder, with the Contrivers thereof, that my Innocence may appear. And though from my Heart I forgive my Accuſers, yet I cite all ſuch as have had a Hand in this bloody Contrivance, before the great Tribunal of God's Juſtice, to anſwer for the Wrong they have done the Innocent; and particularly the Lord Chief-Juſtice, and the Brothers of Sir *Edmund Godfrey*, with Jury, Witneſſes, and all their Partakers. O Lord, bleſs and preſerve his Majeſty, and be merciful to this poor Nation, and lay not innocent Blood to its Charge. So I bid you all Farewel in Jeſus Chriſt, into whoſe Hands I commend my Spirit.

Then turning to ſome of the Officers, he ſaid; There is a Report up and down, that I have confeſſed the Murder of Sir *Edmundbury Godfrey* to Dr. *Lloyd*; I do deny it.

This Paper was ſhewn to *Hill*'s Wife; and ſhe being demanded whether it was her Huſband's Hand-writing, affirmed it was not: And being further aſked, whether ſhe conveyed it to him, ſhe proteſted ſhe knew not how he came by it; and declared that ſhe never ſaw it before.

Then Mr. Green *ſaid*;

I Deſire all your Prayers: And as for Sir *Edmundbury Godfrey*, I know not whether he be dead or alive; for in my Days I never ſaw him with my Eyes, as I know of; and if falſe People will ſwear againſt me, I cannot help it. I pray God to bleſs my King, and all good People.

Then Captain *Richardſon* told him, he had a fair Trial, and wiſhed him not to reflect on others, but to prepare himſelf for Death: To which Mr. *Green* replied, I pray God Almighty to forgive them all: I never ſaw Sir *Edmundbury Godfrey* (to my Knowledge) in my Life.

Mr. *Berry* being a *Proteſtant* of the Church of *England*, was reprieved till the 28th of the ſame Month, in hopes he would make ſome Diſcoveries: Nevertheleſs, when he came to the Gallows, he abſolutely denied all Knowledge or Concurrence in the Fact for which he died; as will be ſeen by the following Account of his Behaviour.

NUMBER XVI.

A Relation of Mr. Berry's *Behaviour and Diſcourſe, from Seven o'Clock in the Morning, 'till he was executed. Written ſo ſoon as I got Home* (*b*). George Wilſon.

WHEN I came to him in *Newgate*, I found him upon his Knees, at his Prayers, with Dr. *Patrick*'s Devotions in his Hands. He told me he was glad I was come, and deſired my Aſſiſtance in Prayer. After I had for ſome while prayed with him, which he did very fervently, I believe, for almoſt all the Time he wept; we then both roſe up together, and had ſome little Diſcourſe. I told him, that as the Law had condemned him, ſo I could not but conclude him guilty; and therefore did aſſure him, that there was a ſtrict Tribunal after this Life, before which we muſt all appear; and in particular for him, that there were but two or three Hours before he muſt ſuffer Death, and come to Judgment; and therefore I did deſire him, that he would reveal to me what he knew of the Murder of Sir *Edmund Godfrey*, that God's Juſtice might be glorified in his Death; and that he would not go out of the World in his Sin, unrepented of; which it muſt be, if he did not abhor it, and confeſs it. He anſwered me, He knew not any Thing of the Fact for which he was condemned: This was ſpoke with ſome Aſſeveration. I hearing him give this Anſwer, aſked him, what were the particular Things that were witneſſed againſt him, for which he was condemned? As I did conjecture then, I thought he ſeemed to be unwilling to ſpeak of this Matter; nor did his Words ſeem to come freely from him: But he told me, that Mr. *Prance* (*c*) had accuſed him for aſſiſting in the carrying Sir *Edmund Godfrey*, after he was murdered, into a Room in *Somerſet-Houſe*: He ſaid, He could not ſay he had never been in the Room Mr. *Prance* ſpoke of, for he believed, one Time or other, that he had been in all the Rooms of the Houſe; but that, to the beſt of his Remembrance, he had never carried, in all his Life, a Two-penny Weight into that Room; but did acknowledge God's Juſtice in his Death, for changing his Religion for Intereſt Sake. Hearing him thus poſitively to deny the Fact, conſidering Dr. *Lloyd* had been with him two or three Days before, I did not further preſs him, becauſe I came to him only for to aſſiſt him in Prayer: And therefore, after this little Diſcourſe, we went to Prayers again, and before we had done, the Ordinary of *Newgate* came in, to whom I gave Place.

He begun to tell Mr. *Berry*, that he had found him of a more ingenuous Temper than the reſt were; and wondered who had been tampering with him, to make him perſiſt in the Denial of the Murder, which if he would have confeſſed, there was once Hopes of a Pardon; but if he would at laſt confeſs it, he would endeavour what he could to have him ſaved: And told him alſo, that it was no Argument, that others had fooliſhly thrown away their Lives, that therefore he muſt do ſo too: therefore, ſays Mr. Ordinary, come tell me what is truth. Mr. *Berry* anſwered, *You have been before very preſſing upon me; I cannot tell what you mean* (and ſhewed his Averſeneſs again to ſpeak of the Murder). *I mean*, ſays Mr. Ordinary, *that thou wouldſt tell me what is Truth; and prithee come tell me what is Truth? Truth*, ſays Mr. Berry, *is not to tell a Lye; not to ſpeak that a Man does not know; and this is Truth. Well*, ſays

(*a*) To be read after their Sentence, Vol. II. p. 787.

(*b*) From a MS. in the Library belonging to the Church of St. *Martin's in the Fields*. Read this, and the MS. Declaration of *Hill*, after their Trials, Vol. II. Pag. 787.

(*c*) *An* ACCOUNT *of the proceeding to Sentence againſt* Miles Prance, *for Wilful Perjury; who was Sentenced in the Court of* King's-Bench, Weſtminſter, *upon a Conviction, by his own Confeſſion, on the* 15*th of* June, 1686, *in wilfully forſwearing himſelf at the Trials of* Robert Green, Lawrence Hill, *and* Henry Berry, *&c. in relation to the Murder of Sir* Edmundbury Godfrey.

MILES PRANCE, a Silverſmith, having been, the laſt *Eaſter* Term, arraigned upon an Information of Wilful Perjury, exhibited againſt him in the Court of *King's-Bench*, for wilfully forſwearing himſelf againſt *Robert Green*, *Lawrence Hill*, and *Henry Berry*, &c. in relation to their murdering Sir *Edmundbury Godfrey*; and for which, upon his Oath, *&c.* they were executed for the ſaid Murder at *Tyburn*; and he confeſſing himſelf Guilty of the Perjury ſpecified in the ſame Information, was, on *Tueſday*, the 15th of this Inſtant *June*, again brought to the Court of *King's-Bench*, to receive his Sentence. The Court having a while conſidered the Heinouſneſs of the Crime, and putting him in Mind of it, told him, It was well he was ſo ſenſible of his Offence, it being ſo great a one, as to extend to the taking away the Lives of innocent Perſons, which did aggravate it; though one that had before him been found Guilty of two notorious Perjuries in that Court, continued obſtinate to the laſt; and, for aught appears, has not hitherto ſhewn any Remorſe. Yet ſeeing he (meaning the Priſoner) was ſenſible of his Crime, and had confeſſed it, the Court had conſidered his Condition, and would have ſome Compaſſion on a true Penitent. The Sentence of the Court was, "That he ſhould pay a Fine of One Hundred Pounds to the King: That he ſhould appear "before each Court in *Weſtminſter-Hall*, *&c.* with a Paper upon his Forehead, expreſſing his Crime: That on *Monday* next he ſhould ſtand at *Weſtminſter* in the Pillory, be-"tween the Hours of Eleven and One, for the Space of an Hour; on *Wedneſday* the like, before the *Exchange*; and on the following *Monday*, at *Charing-Croſs*: And he was "likewiſe Sentenced to be Whipped from *Newgate* to *Tyburn*; and he to continue in Priſon 'till all was performed."

Prance, upon the aforementioned Exhortation, declared, That his laſt Confeſſion was the Truth; and that he was very ſenſible of, and ſorry for what he had done; upon which the Court deſired God to continue him ſo.

The Sentence paſſed, the Keeper of the *Gatehouſe* was ordered to take back his Priſoner, which he accordingly did, conveying him to the *Gatehouſe* Priſon, where he now (*June* 15, 1686), remains in Cuſtody.

Mr. Ordinary, *come tell me what thou knoweſt of the Murder, and do not damn thyſelf.* Says Mr. *Berry*, *But I think you would have me, by your thus preſſing of me; for I did not know any Thing of it, for a Fortnight after it was done.* Mr. Ordinary then told him, he would deceive himſelf if he thought that any Abſolution, or any Indulgence, of either Prieſt or Pope, could ſave him, without true Repentance. He ſaid, he did not believe any ſuch Thing. Mr. Ordinary perceiving that this Diſcourſe did but diſorder him, and had put him out of that Compoſure and Calmneſs he was in before, gave it over, and went to Prayers, till the Sheriff ſent to him, to come away to Execution. When we were coming out of his Priſon-Chamber, Mr. Ordinary aſked him, if he ſhould go along with him to his Execution: Mr. *Berry* begged heartily that he would not, but deſired me to go along with him: Mr. Ordinary ſaid, It was his Place, and he would go. We both went, and got into the Cart to him, at the Place of Execution: When he had prayed by himſelf a good while, Mr. Ordinary deſired him to confeſs to the People his Crime, which was ſeconded by others that ſtood by, ſaying, There was no Repentance without publick Confeſſion. Mr. *Berry* being thus preſſed again, he declared (otherwiſe I believe he would not have ſaid any thing, but have gone out of the World without ſpeaking one Word of his Innocency, or of the Murder; for he ſeemed to be, both before and after, when preſſed again to confeſs, to be averſe to it) he was as innocent as the Child that is new born. Preſently the Sheriff ſtopped him from ſaying any thing more, and told him, he was not to ſuffer him there to defame an honourable Court, but if he had any other Thing to ſay, he might: He anſwered, He did not blame either Judge or Jury (and had before at firſt prayed, as for the King and Queen and Church, ſo for the Magiſtrates, that God would protect them in their Duty), but for his Accuſers, He muſt ſay they had done him Wrong, for he was not guilty of that for which he ſuffered; but he prayed God to forgive them, and that his Death might be the laſt innocent Blood that might be ſhed in the Land; and prayed that his might never cry for Judgment. After which, Mr. Ordinary prayed for him, which was very uneaſy to him, and he deſired him not to do it. Then he deſired me to pray for him; after which, I did not hear him ſay any thing, but left him praying: And when the Cart was drawing from under him, he lifted up his Hands towards Heaven, and ſaid, *As I am innocent, ſo receive my Soul, O Lord Jeſus!*

NUMBER XVII.

Mr. SAMUEL ATKINS *his Account of his Examination before the Committee of Lords, appointed to examine after the Murder of Sir* EDMUNDBURY GODFREY (*a*).

NOVEMBER 1ſt, 1678, being *Friday*, in the Afternoon, about Five o'Clock, Mr. *Smith*, one of the King's Meſſengers, came to Mr. *Lawrenſon*'s, at the Rheniſh Wine Houſe in *Weſtminſter*, (in Company with Mr. *Hanch*, Chamber-keeper to Mr. Secretary *Coventry*) and ſent from thence to *Derby* Houſe, to ſpeak with me; who being then not in the Way, Mr. *Walband* went over, ſuppoſing he might have done what Buſineſs they came about; but he preſently returning, upon their telling him their Buſineſs was with me, I went over to them, and after I had ſat a very little while, Mr. *Smith* told me, his Errand was to deſire me to go with him to Mr. Secretary *Coventry*, to which I aſſented moſt readily, and aſking him, if he knew what the Occaſion of it was, he told me, No, and then pulled a Warrant out of his Pocket, for the apprehending me; but told me, he had Commands from Mr. Secretary, not to tell me of it, or put it in Execution, unleſs upon my Refuſal to go with him; to which I anſwered, There ſhould be no Occaſion for the Warrant, being very free to go with him; which I thereupon preſently did, and coming to Mr. Secretary's Office, I met Mr. *Thinn*, and enquired of him, If he knew the Reaſon of Mr. Secretary's Meſſage to me? He anſwered, That it was grounded from a Letter he had newly received from a Committee of Lords appointed to examine after the Murder of Sir *Edmundbury Godfrey*, deſiring him to find out, and ſend to them one *Samuel Atkins*. After a little Stay at Mr. Secretary's Office, he came in, and immediately gave Orders for the preparing a Letter to the Committee, to accompany me thither, which was accordingly done, and I went under the Care of the aforeſaid Meſſenger, to the ſaid Committee, then ſitting at the Lord Marquis of *Wincheſter*'s Houſe, in *Lincoln's-Inn-Fields*; when being come, and the Letter from Mr. Secretary ſent in to them, I was inſtantly called for before them, who were the

Duke of *Buckingham*, Lord *Halifax*, Lord *Eſſex*,
Lord *Shaftsbury*. Lord M. *Wincheſter*, Lord Biſhop of *London*.
And Sir *Philip Howard*, attending.

And the following Queſtions were aſked of, and anſwered by, me.

Ld. *Shaftsbury*. Pray, Mr. *Samuel Atkins*, do you know one Mr. or Capt. *Charles Atkins*?---*Samuel Atkins*. Yes, my Lord.

Ld. *Shaftsb*. How long have you known him?

S. Atk. About two or three Years, I think.

Ld. *Shaftsb*. Are you related?

S. Atk. No, my Lord, only for Name-ſake have called Couſins.

Ld. *Shaftsb*. Do you know, or believe, he has any Reaſon to do you a Prejudice?

S. Atk. No, my Lord, I know of none, nor ever gave him Occaſion to have any.

Ld. *Shaftsb*. Did you ever tell him, upon Diſcourſe about the Plot, that there was no Kindneſs (or a Want of Friendſhip, I think 'twas) 'twixt Mr. *Pepys* and Sir *Edmundbury Godfrey*?

S. Atk. No, my Lord, I never mentioned Sir *Edmundbury Godfrey*'s Name to him in my whole Life, upon any Occaſion that I remember; nor ever talked with him about the Plot.

Ld. *Eſſex*. Do you know one *Child*?

S. Atk. No, my Lord; I have heard of ſuch a Man's being concerned in the Victualling of the Navy, but, to my Knowledge, never ſaw him.

Ld. *Eſſex*. No, no, this is another ſort of a Man, and one whom you will be found to know very well.

S. Atk. My Lord, if upon ſeeing him I ſhall ſo, I ſhall not ſtick to own it.

(*Hereupon*, Child *was called for in, and appeared to be an ordinary Sort of a Seafaring Man.*)

Ld. *Eſſex*. Now, pray, don't you know this Man?

S. Atk. No, Sir, I never ſaw him in my Life, to my Remembrance.

Ld. *Eſſex*. No! What ſay you, *Child*, don't you know him?

Child. No, my Lord, I never ſaw him in my Life.

(*Then* Child *was preſently carried out of the Room, and Capt.* Atkins *called for, who came in at another Door of the Room, and after mutual Salutations 'twixt us, the following Queſtions were aſked.*)

Ld. *Shaftsbury*. Pray, Capt. *Charles Atkins*, What did Mr. *Samuel Atkins* tell you about Mr. *Pepys* and Sir *Edmundbury Godfrey*?

Charles Atkins. My Lord, he told me there was a Difference 'twixt his Maſter and Sir *Edmundbury Godfrey*, and I aſked him, If Sir *Edmundbury Godfrey* was a Parliament-Man, or no? He ſaid, No. I aſked him, Whether the Difference was upon Occaſion of Mr. *Pepys*'s being formerly accuſed for a Papiſt in the Houſe of Commons? And whether Sir *Edmundbury Godfrey* might not be concerned in doing that? He anſwered, No; and that it was upon this Occaſion.

Samuel Atkins. My Lord, I gueſs not at what has led Capt. *Atkins* to ſay this; I aſſure you, I never told him in my Life one Word of it, never talked to him about the Plot, or mentioned Sir *Edmundbury Godfrey*'s Name to him (as I remember) on any Occaſion; I am ſure I never made him a Subject for any Diſcourſe.

Ld. *Shaftsbury*. Did you not, Mr. *Samuel Atkins*, aſk Capt. *Atkins*, Whether this *Child* was a Man of Courage and Secrecy, and bid him ſend *Child* to *Derby* Houſe, to enquire for your Maſter, but be ſure not to aſk for you?

S. Atk. No, Sir, not in my Life, one Word like it.

Capt. *Atkins* then anſwered me, You know, Mr. *Atkins*, this Diſcourſe was between us in the Lords Room, at *Derby* Houſe, in the Window.

Capt. *Atkins*, ſays I, God, your Conſcience, and I, know 'tis notoriouſly untrue: The laſt Time I ſaw you at *Derby* Houſe was, as I remember, on a *Monday*, Mr. *Beverly* (late Lieutenant of the *Montague*) being there preſent; which I well remember, becauſe we all three came out of *Derby* Houſe together, about One o'Clock at Noon, and parted in *King-ſtreet*; I went to Dinner, and you two towards *Whitehall*; Mr. *Beverly*, to whom I talked all the Way going, having invited me to dine the next Day at his Houſe, being *Tueſday*, which I accordingly did. All that paſſed between us then (our Stay alone together, as I believe Mr. *Beverly* remembers, being not half a Quarter of an Hour), was, That coming all three out of the little Office together, into the Lords Room, you pulled me to the Window next the Office Door in the ſaid Room, and aſked me to lend you a Crown, to which I aſſented; and ſo going down Stairs, I ſtaid back, Mr. *Beverly* going down firſt, and pulled you by the Coat, and put the Crown into your Hand, to prevent *Beverly*'s obſerving. This paſſed the laſt Time I ſaw you; the Time before was about the Middle of *Auguſt*, a little before *Bartholomew* Fair, when you came to me in the Lords Room, with one Capt. *Hurſt* (your Familiar, but a Stranger to me, having never but once, that I know of, ſeen him before), and told me, there was a Friend of Capt. *Hurſt*'s (poſſibly you might name his Name, and it might be *Child*, but I don't remember it) that wanted the Employment of a Purſer in one of the King's Ships, and had applied himſelf to Capt. *Hurſt*, to do him what Kindneſs he could, and offered him ten Guineas to be aſſiſtant to him. Now, ſays Capt. *Atkins* to me, Pray let's bring the Man to you, and upon your promiſing to do him what Kindneſs you can, Capt. *Hurſt* and I ſhall have the ten Guineas, and you know five Guineas, ſays he, will do very well for me, this *Bartholomew*-Fair-Time. I then aſked you, What the Man was? Whether he had been at Sea? And whether he had good Certificates? You anſwered me, You could not tell, being a Stranger to you, but you would bring him to ſpeak with me: I then bid you ſo to do; and told you, all I could, or had in my Power to do for him, was to lay his Papers before the Secretary, who, if he appeared a good Man, would lay them, with others, before the King, when Occaſion offered: You replied then, That that was enough, and all you expected. After this, I called you (as I know you remember) to the other Side of the Room, from Capt. *Hurſt*, and told you my Deſires were, you

(*a*) The Trial of Mr. *Samuel Atkins*, for the Murder of Sir *Edmundbury Godfrey*, is printed in the Second Volume of the *State-Trials*, p. 788. It diſcloſes a Fact, which ſeems to have been induſtriouſly concealed by the Court, at that Time, and is not mentioned by any Hiſtorian that we know of: As every new Circumſtance muſt be agreeable, which tends to clear up that myſterious Piece of Hiſtory, the Popiſh Plot, we hope we ſhall not be blamed for preſerving the following Account, which we have copied from the MSS. of *Samuel Pepys*, Eſq. formerly Secretary to the Admiralty, which are preſerved in *Magdalen* College, *Cambridge*; it giving a further Light into the Character of one of the principal Witneſſes on that Occaſion; and withal, ſhews the miſerable Condition even of innocent Perſons whoſe Misfortune it is to fall under State Proſecutions.

ſhould not engage me in this Matter, to get the poor Man's Money, for that I would not do it for any Conſideration: You ſaid, indeed, you would not, nor would have me do any Thing, 'till I had ſeen and diſcourſed with the Man. You then call'd to Capt. *Hurſt*, and invited him and me to come to Dinner on the Morrow, to your Lodging; to which I agreed, and aſk'd you where you lodg'd; you ſaid, you had told me oft enough, but I had ne'er been ſo kind to come to ſee you, and then told me where it was, which I have now forgot, but think it was in or near *Wild-ſtreet*. After this Diſcourſe, you know, we parted, and you and Capt. *Hurſt* left me at *Derby*-Houſe, and expected me, I ſuppoſe, at Dinner next Day; but I, indeed, deſirous to be quit of any Thing that appear'd ſo ill as the Buſineſs propoſed to me, came not to you, nor ever heard more of it from yourſelf, or Capt. *Hurſt*; nor ſaw you again, till the aforeſaid Twenty-firſt of *October*. This, Capt. *Atkins*, you know, is all true; I appeal to yourſelf if it be not.——

Ld. *Shaftsb.* Come, come, Mr. *Atkins*, you are a ſeeming hopeful young Man, and, for aught I ſee, a very ingenious one: Capt. *Atkins* has ſworn this poſitively againſt you, to whom he bears no Prejudice, or Malice, but has acknowledged ſeveral Obligations from you; and to tell you truly, I don't think he has Wit enough to invent ſuch a Lye; be ingenuous, prithee, with us, and confeſs what you ſaid.

S. Atk. I aſſure your Lordſhip, upon my Faith, which I am ready to bind with my Oath, if you pleaſe, I ne'er ſaid one Word in all my Life like it.

Ld. *Shaftsb.* Indeed, we believe Capt. *Atkins* to be a Man that has loved Wine and Women, and been a debauch'd Man; but whence would you have us to think him to be a Raſcal?

S. Atk. Why, my Lord, I would offer this, and ſubmit to you to judge how far a Coward is to be reckon'd ſo. *And hereupon, I related at large the ſurrendering of the King's Ship baſely to the* Turks, *and being now a Priſoner. To which no Anſwer was given.*

Ld. *Shaftsb.* Pray, Mr. *Atkins*, What Religion are you of?

S. Atk. A Proteſtant, Sir, and my whole Family ever ſo.

Ld. *Shaftsb.* Did you ever receive the Sacrament, or take the Oaths?

S. Atk. No, Sir; but was under an Intention to do it on *Sunday* next.

L. *Eſſex.* 'Tis indeed Time.

Ld. *Shafts.* Now, I am ſure you won't do it; you can't forgive Capt. *Atkins?*

S. Atk. Yes, my Lord, I aſſure you I can, and do; and to ſhew it to you, I alſo remit to him the Money he owes me, (about Fifty Shillings,) and am ready to receive the Sacrament with a clean Conſcience. I confeſs I have not done it, as not thinking myſelf oblig'd by any Employment I had to do it, and many Thouſands of my Age *(Good Proteſtants)* will be found not to have done it.

Ld. *Shaftsb.* How long have you lived with Mr. *Pepys?*

S. Atk. Four Years laſt *Auguſt*.

Ld. *Shaftsb.* How old are you?

S. Atk. Twenty-one Years, the twenty-ninth of that Month.

Ld. *Shaftsb.* Where did you live before you came to Mr. *Pepys?*

S. Atk. I lived, Sir, formerly with Commiſſioner *Middleton*.

Lord *Shaftsb.* Then I am ſure he was a *Proteſtant:* But now you are brought into Buſineſs, and have Acceſs to St. *James*'s; 'tis to be fear'd you may be otherwiſe, for we are apt to ſuſpect People inclining to the Sea.

S. Atk. I never had Temptation from within, or without, to alter my Religion, and hope in God I never ſhall. *Then the Duke of* Buckingham *came from the other Side of the Room towards me, and ſaid,*

D. *Buck.* Well, Mr. *Atkins*, I ne'er ſaw you before that I remember; but I ſwear you are an ingenious Man: I ſee *(putting his Finger to his Forehead)* the great Workings of your Brain, and would gladly, for your own Sake, have you declare to us what you know of this Matter.

S. Atk. My Lord, I can never ſay otherwiſe than I have, (I thank your Lordſhip for your good Thoughts of me) nor do I know one Word more.

And to this Effect, one after another, did moſt of the Lords of the Committee urge me to ſay ſomewhat, repeating very often their good Opinion of me, and their great Sorrow for my Obſtinacy, which would bring the Prejudice to myſelf, while by a Confeſſion I could not injure, but advantage myſelf; Captain Atkins *joining with them to urge me to it, with* Promiſes of making my Fortune thereby: *I ſtill gave the ſame Anſwer, declaring my utter Inability to ſay one Word, and avowing I never had to Captain* Atkins.

Hereupon we were both order'd to withdraw, which we did, and after a little Stay without, they call'd me again to them, and my Lord Shaftsbury *began.*

Ld. *Shaftsb.* Mr. *Atkins*, truly we are, every Lord of this Committee, very ſorry to be thus plain with you, but here being ſo poſitive an Oath againſt you, we cannot anſwer to the Parliament the doing leſs than committing you to *Newgate*.

S. Atk. What your Lordſhips pleaſe; if you ſend me to be hang'd, I can ſay no more, or otherwiſe.

Then they again repeated their Advices ſeverally to me, to declare what I knew, and greatly pitied me in the ill Fortune which otherwiſe would attend me. I as often repeated what I ſaid at firſt, of my knowing nothing of what Captain *Atkins* had ſworn. At laſt Sir *Philip Howard* (who ſtood by all this while) told me, I could not have lived ſo long Time in an Office of Buſineſs, but I muſt know the Laws of this Nation to be ſuch as would bring me under ſevere Puniſhment, if I ſhould be found to conceal this Matter, which I am well perſuaded you muſt know of, (ſays he,) for that I have ſo ſeriouſly and very ſtrictly examin'd Captain *Atkins* about it, and I know he would not tell me a Lye. Beſides, he has no Reaſon to do it towards you, and being a Gentleman, Son of Sir *Jonathan Atkins*, my Nephew, otherwiſe well related, and won't want an Eſtate of his Father (if he pleaſes) when he dies, he can't be thought to attempt to do it againſt any Body. I told him, I very well knew the Laws of this Nation in that Point, and as well knew the Laws of God to be ſuch as would draw a worſe Puniſhment upon my Head, if I could tell a Lye, or invent any thing to the Prejudice of another Man, and that I muſt do, if I ſaid any thing in this Matter different from what I have done.

After this, I was ordered to withdraw, and Captain *Richardſon*, Keeper of *Newgate*, (who waited without with the aforeſaid *Child*,) called in, and a Warrant deliver'd to him in the following Words, for his keeping me in his Cuſtody, *viz.*

You are herewith to receive the Body of Mr. Samuel Atkins, *for Suſpicion of Felony, in concealing the Murder of Sir* Edmundbury Godfrey, *and him ſafely to keep, until he ſhall be thence deliver'd by due Courſe of Law: And for ſo doing, this ſhall be your Warrant ſufficient. Given under our Hands and Seals this firſt Day of* November, 1678.

Sign'd,

To the Keeper of the Gaol of Newgate, *for the City of* London, *and County of* Middleſex.

Buckingham,
Wincheſter,
P. Howard.

Memorandum. The Depoſition made by Captain *Atkins* againſt me, from whence theſe Examinations proceeded, and my being committed to Priſon was grounded, hereafter follows in the expreſs Words thereof, as they were reported by the Committee to the Houſe of Lords, and enter'd in their Book, *viz.*

Die Martis 12° Novemb. 1678.

The Examination of Charles Atkins, *Eſq. taken upon Oath before me, One of His Majeſty's Juſtices of the Peace for the County of* Middleſex, *and Liberty of* Weſtminſter, *this firſt Day of* November, 1678.

SAITH, That in *Derby*-Houſe, being in Diſcourſe with *Samuel Atkins*, (Clerk to Mr. *Pepys*, Secretary of the Admiralty) the ſaid *Samuel* did ſay, That Sir *Edmundbury Godfrey* had very much vilified his Maſter, and that if he liv'd long would be the Ruin of him; upon which the ſaid *Samuel* did aſk this Examinant whether he did think *Child* to be a Man of Courage and Secrecy; to which this Examinant did reply, That the ſaid *Child* had been at Sea, and had behaved himſelf very well, as he had been inform'd; upon which the ſaid *Samuel* did bid this Examinant ſend the ſaid *Child* to his Maſter, Mr. *Pepys*, but not to him the ſaid *Samuel*, for that he would not be ſeen to know any thing of it. This Examinant did endeavour to find out the ſaid *Child*, but did not meet with him till the Day after this Diſcourſe had happened betwixt him and *Samuel Atkins*, at the *Three Tobacco-Pipes* in *Holbourn*, where this Examinant did tell *Child*, that Secretary *Pepys* would ſpeak with him; and the next Time that this Examinant did ſee the ſaid *Child*, (after that he had given him that Direction) he, the ſaid *Child*, did endeavour to engage the ſaid Examinant to join with him in the Murder of a Man. The Particulars of which, this Examinant hath declared before the King and Council, *Wedneſday* laſt paſt.

Taken before me, One of His Majeſty's Juſtices of the Peace for the County and Liberty above-mentioned.

P. Howard.

Upon this Depoſition was grounded the afore-recited Warrant for my Commitment, by Vertue whereof, Captain *Richardſon* carried me preſently to Priſon, where I remained in a Room of his own Houſe, without having Liberty to write to, ſee, or ſpeak with any Body, till *Wedneſday* the ſixth Day of *November*, 1678, when having well ruminated on what had paſt at my late Examination, I deſired Captain *Richardſon* to acquaint the Lords of the Committee, that at their next Meeting I would pray to be brought before them; which he promiſed to do, and did; and on the ſaid ſixth of *November*, 1678, being *Wedneſday*, I was carried by him to the Committee, conſiſting of the ſame Lords as before, then ſitting at the Lord Privy-Seal's Chamber by the Parliament-Houſe, where the following Queſtions were aſked:

Ld. *Halifax.* Well, Mr. *Atkins*, we hope you have conſider'd of this Buſineſs, and are ready to give us ſome Light in it. *Nov.* 6, 1678.

S. Atk. My Lord, I have well indeed conſider'd of it, and I hope am prepar'd to ſhew your Lordſhips that nothing is to be expected from me, and ſo my Liberty will not be denied me.

Ld. *Halifax.* Nay then, Mr. *Atkins*, if you come to that, you muſt ſtay till we ſend for Captain *Atkins*, if it be aught you would ſay againſt him, or his Accuſation.

S. Atk. My Lord, I hope I ſhall confute him in ſeveral Circumſtances, which I have better conſidered, and clear to you my Innocence.

Ld *Shaftsb.* Why, Mr. *Atkins*, Captain *Atkins* declares to us he has much more againſt you, and ſeveral other Circumſtances, by which, he ſays, you'll appear the worſt Man living.

S. Atk. My Lord, if you pleaſe, I deſire he may be ſent for.

Upon this I was ordered to withdraw, and Captain *Atkins* being ſent for to Sir *Philip Howard*'s, in *Scotland-Yard*, came in about Half an Hour, and meeting me in the Paſſage leading up the Stairs to the Chamber where the Council was ſitting, I obſerved his Countenance altered extremely, and took Notice of it to him: He paſſed by me, and went up the Stairs, and ſtaying there in Expectation of being call'd, I went to him with my Keeper, (Mr. *Lion*,) and diſcourſing together, I aſk'd him what had induced him to bring this Miſchief upon me, and whether he deſign'd to ruin me, that had preſerv'd him from it? He anſwer'd, No, no, not he. I further aſk'd him, if I look'd like one that had done, or knew of any Murder; and whether he thought in his Conſcience I did? No, faith, ſays he, I dare ſwear for you for that Matter, only theſe Words paſt between us: Well, ſays I, you ſay 'twas between us, ſo 'tis impoſſible to contradict your Oath; but God, you and I know, 'twas not ſo. Hereupon, after ſome little other Diſcourſe, he went down Stairs,

Stairs, and I following him, aſk'd him over again, Whether he had any Thing more to ſay againſt me, or whether indeed he thought I knew any Thing of the Murder? To which he anſwered (as before,) No, not he, he did not think it; of which I deſired Mr. *Lion* to take Notice; and preſently after this, the Lords call'd for us both in, and ſaid;

Ld. *Shafts.* Well, Mr. *Atkins*, What is it you have to ſay?

S. Atkins. I deſire, my Lords, if you pleaſe, that Captain *Atkins*'s Information may be read to me, or elſe I ſhall repair to my Memory to repeat it.

Lords. Do, repair to your Memory.

Then I recited it as 'tis herein before-mentioned, and anſwer'd to it thus: As to his poſitive Oath, my Lords, about the Difference he ſays I told him was between Sir *Edmundbury Godfrey* and Mr. *Pepys*, that can admit of no more than my denying it; and being ready and deſirous, if you pleaſe, to ſwear to the Truth of what I ſay. As to his Queſtion, Whether Sir *Edmundbury Godfrey* was a Parliament Man or not, and the Anſwer he ſays I ſhould give him, that he was not, I am alſo as ready to depoſe, that to this Minute, I don't know whether he was ſo or no, and ſo could not make him that Anſwer. Then as to the Riſe of the Difference to be, as he calls it, *upon this Occaſion*, the laſt Time I ſaw Captain *Atkins* (before Sir *Edmundbury Godfrey*'s Death) was about the Middle of *Auguſt*, a little before *Bartholomew* Fair-Time, and long enough before any Diſcovery was made of the Plot; ſo pray what means he by *upon this Occaſion?* Beſides, I aſſure your Lordſhips, I did not know till after the Death of Sir *Edmundbury Godfrey*, that he took any Depoſitions, or was otherwiſe inſtrumental in diſcovering any Part of the Plot; and the firſt Notice I had of it, was from my Fellow Clerk, Mr. *Walkank*, who told me (I think on the *Monday*) in this Manner of it: Poor Sir *Edmundbury Godfrey!* Why, ſays I, pray what's the Matter with him? Why, they ſay, replies he, he is murder'd by the *Papiſts*, having been gone from his Houſe, and not heard of this Day or two: Lord, ſays I, why ſhould he be murder'd, a very good and honeſt Gentleman? I but (ſays *Walbank*) the Reaſon of it was, as 'tis ſaid, becauſe he was the firſt that took the Depoſitions, *&c.* about the Plot. Upon this the Lords all cry'd out, they did not believe 'twas poſſible I that liv'd in an Office of ſo great Buſineſs, ſhould not hear of his taking the Depoſitions till after his Death, ſince they were done, (I think they ſaid a Month before the King went to *Newmarket*) and carried to the Council. I anſwered, and induſtriouſly aſſerted, what was really Truth, that I did not. But, my Lords, ſays I, pray ſuppoſe (what is ſo utterly in Fact untrue) I had ſaid to Captain *Atkins* what he ſwears I did; I muſt now declare I had no Ground to ſay ſo; and that it muſt ariſe purely from my own Invention, and if I invented a Lye, I muſt ſuffer for doing it; And pray, my Lords, what will come on't? Nay, nay, ſays my Lord *Shaftſbury*, leave us to make the Uſe of it; do you but confeſs it, you ſhall be ſafe, and we'll apply it. My Lord, ſays I, I can't do it; I hope I never ſhall tell a Lye to any Man's Prejudice, though I meet with ne'er ſo great Danger. My Lord *Shaftſbury* anſwer'd, Indeed, Mr. *Atkins*, Ten then may ſwear againſt you, and for aught I know all belye you; And are you innocent? You're moſt unfortunate, and Captain *Atkins* the greateſt Villain in the World. Pray, look one another in the Face, (ſo we gazed very earneſtly) and my Lord *Shaftſbury* went on, ſpeaking to Captain *Atkins:* Come, Captain *Atkins*, confeſs truly and ingenuouſly, Have you belyed Mr. *Atkins*, or no? May be you may have miſtaken; pray conſider it, and remember the Injury you'll do this young Man, if this be not true: You won't have more to anſwer for before God, if you ſhould waſte and deſtroy an Emperor and his Country, than you'll have if you wrongfully ruin him, who is in himſelf (as every Man is) a little Emperor. After this Sort my Lord *Shaftſbury* preſſed Captain *Atkins* very home, and while he was doing ſo, and we looking ſtedfaſtly upon each other, Captain *Atkins*'s Countenance chang'd very white, which I taking Notice of, and obſerving to the Lords, my Lord Marquis of *Wincheſter* cried, Where, where? I don't ſee it. My Lord, ſays I, I humbly conceive 'tis very apparent: I, I, where? ſays his Lordſhip, turning his Head away; the other Lords ſaid nothing. Then Captain *Atkins* having a Tobacco-Pipe rolling about in his Fingers upon the Table, threw it down, and ſaid, Why ſhould I ſay ſo, my Lords, if he had not told me? Thereupon I grew indeed angry, and preſſed very hotly for my Liberty, avowing my Innocence with ſeveral Proteſtations; but all was too little. My Lord Biſhop of *London* (whom I took to be more tender-hearted than the reſt) I apply'd myſelf to, and talk'd about my Religion, and of my having never gone to Maſs, nor ever known, or ſeen any Prieſt in my Life that I remember'd. He at laſt was pleaſed to ſay, Truly I believe you are a Proteſtant; but this Oath is greatly againſt you, and he ſtill affirms it poſitively. My Lord, ſays I, 'tis very ſtrange I ſhould invent ſuch a Lye to tell Captain *Atkins* of my Maſter; I hope I ſhall not be found ſo faithleſs a Servant, when I never in my whole Life heard Mr. *Pepys* mention Sir *Edmundbury Godfrey*'s Name, that I remember, but upon an Occaſion (which I mention'd at large) of our going before him about ſome Money loſt from Mr. *Pepys*'s Houſe, and then they appear'd as great Friends as could be, and ſhew'd mutually very great Expreſſions of Kindneſs and Reſpect. 'Tis ſtrange I ſhould aſk him of the Courage and Secrecy of a Man I never ſaw; and as ſtrange to bid him ſend him to my Maſter; who will, I ſuppoſe, declare, whether I ever ſpoke to him about any ſuch Man, as I am ſure I did not, nor could. At laſt, my Lord, ſays I, I avow to you, Mr. *Pepys* never in his Life committed any Secret to me of any Kind, nor ever mentioned, upon any Occaſion, one Word about Sir *Edmundbury Godfrey*. And this your Lordſhips would eaſily believe, if you knew how tottering I ſtand in his Opinion, having been once parted from him, and at this Moment I believe remain under his ill Apprehenſion. Why, ſays my Lord Biſhop, are you given to Drink, or Debauchery? No, my Lord, I thank God not. But Mr. *Pepys* is very ſevere in his Houſe, and for the leaſt Abſence from it without his Knowledge, will diſcard any of his Servants from his Favour: I coming very young to him, was inclin'd, through Boyiſhneſs, to too much Deſire of Eaſe and Liberty, and ſo begot and continued his Severity towards me.

While I was thus talking to my Lord of *London*, Captain *Atkins* was diſcourſing to the other Lords, at the other End of the Room; and my Lord *Shaftſbury* obſerving what we both ſaid, turn'd towards me, and ſtopp'd my going on: Why, you talk, Mr. *Atkins*, (ſays my Lord) 'twill be made appear, that you are the greateſt Favourite he has; you read all his Letters, read to him by Night; and what ſay you, if I can prove, from the Servants in your own Houſe, that you are reputed a Papiſt? My Lord, ſays I to that, if your Lordſhip can do that, or any Man in the World, prove I am in the leaſt wiſe, or ever was inclined that Way, I'll be contented to be hanged, without ſaying a Word more. My Lord *Shaftſbury* goes then on again; Pray, Mr. *Atkins*, What Books did you uſe to read to Mr. *Pepys?* My Lord, ſays I, I have not lately read any to him; but formerly I have read the Bible, and other good Books; ſometimes Hiſtory, other Times Divinity.—Never any Popiſh Books?—No, never in my Life, I aſſure your Lordſhip, never any; but, as I remember, one Book of an *Engliſh* Divine's, about their Error in their Doctrine of Tranſubſtantiation, but the Book's Name I forget.

After all this, I found I muſt return to Priſon; I offered Bail, which being deny'd me, I pray'd Liberty, that my Siſter might come to ſee me; which was granted ſhe ſhould for one Time, the Keeper of the Priſon to be by while ſhe ſtay'd with me; and after that I withdrew, and Captain *Atkins* together; he, as ſoon as I was out, ſtepped in to the Lords again, and (as I underſtood afterwards) deſired the Keeper might have Orders for his coming to me, upon his Suggeſtion to the Lords, he would bring me to confeſs, which was granted he ſhould; and ſo I was recarried to Priſon, and remain'd there 'till *Friday* the Eighth of *November*, without having heard from, or ſeen any Perſon, ſaving my Siſter, who came to me the Day before, and remained in the Room Half a Quarter of an Hour, with Captain *Richardſon*.

Friday Morning, being the Eighth of *November*, Captain *Atkins* comes up to my Chamber (with Captain *Richardſon*, in whoſe Houſe I ſtill remain'd), and finding me in Bed, throws open the Curtain, and bids me Good-Morrow; I ſeeing who it was, leap'd out of the Bed, and returning his Good-Morrow, called to Captain *Richardſon*, who was going down Stairs again, and pray'd I might ſpeak a Word with him, and ſo taking him into the next Room, For God's Sake, ſays I to him, don't leave me alone with this Man, who having already ſworn falſely againſt me, will, for aught I know, go back to the Lords, and ſwear any thing more he liſts; Captain *Richardſon* anſwered, The Lords had directed he muſt, and he muſt be alone with you: Oh! pray, ſays I, ſuffer it not, for I vow I won't ſpeak one Word to him alone. Notwithſtanding this, Captain *Richardſon* pull'd to the Door, and left us both together, promiſing to return immediately. The Door was not ſooner ſhut, and Captain *Richardſon* gone, than Captain *Atkins*, wringing his Hands, and crying with the Tears upon his Face, ſaid to me, Oh! Mr. *Atkins*, we are both undone! How undone? ſays I. Oh Lord! ſays he, there's a Man come to Town laſt Night, lay at Mr. Secretary *Williamſon*'s, was examin'd two Hours by the King, and has ſworn poſitively againſt you, That you were, or were to have been at the Murder of Sir *Edmundbury Godfrey*; I am not, ſays he, very perfect whether. Well, ſays I, God bleſs him: But how, pray, are you undone? 'Tis I am ſo, if this be true: Says he, (ſtill crying, and laying his Hand upon his Breaſt) I am undone. That's true indeed, ſays I, your Guilt upon your Conſcience, in bringing this falſely upon me, has undone you to the Purpoſe. But, pray, who is this Man? Do you know him? I don't know his Name, ſays he, nor ever ſaw him but once before, and that was in *Eſſex* Buildings; the Woman of the Houſe being arreſted where we were, he and I reſcued her from the Bailiffs. 'Tis ſtrange, ſays I, he ſhould come and enquire for you, and find you out as ſoon as e'er he came to Town, and you not know him, nor ever ſaw him but once. 'Tis ſo, ſays he; he came to me, to enquire about a Gentleman we had Buſineſs with before he went out of Town. Well, I anſwered, I can't help what he has done; I thank you for all this, but won't doubt, if Twenty ſwear againſt me, I ſhall appear innocent, I am ſure I ſhall, to the laſt Moment of my Life. Pray, Mr. *Atkins*, ſays he, conſider of it: My Uncle, *Phil. Howard*, bid me come to you, to tell you of it, and pray confeſs, before 'tis too late, and you repent you did not; there's nothing can hurt you, but your Fortune may be made by it; and what need you care for your Maſter? Pray, ſays I, Why don't you as well aſk me to forego my Salvation? A Thouſand Deaths ſhall not extort a Lye from me; and you know I can ſay nothing: Pray, conſider you of it, and repair the Injury you have done me, as well as you can. In the Middle of our Diſcourſe, walking together in the Room, he ſuddenly ſtood ſtill, and turning toward me, You did not tell me, ſays he, your Maſter had a Houſe at *Roan*, in *France*, neither, did you? Oh ſtrange! ſays I; Why, have you ſworn that too? No, not I, replied he, What ſhould I ſwear it for? But you told me ſo. At which, being greatly ſurprized and amazed, I could not preſently ſay any Thing to him, and while I was ſilent he goes on. And you know, ſays he, you deſired me to impeach your Maſter about this Murder, becauſe he ſhould keep it off from the Duke of *York*. Oh! Lord of Heaven! ſays I, And have you depoſed that too? No, not I, ſays he; What ſhould I ſwear it for? But you know you told me ſo. Mr. *Atkins*, ſays I, you are the greateſt Villain, and worſt Man in the World, and I am ſure you will repent the curſed Miſchief you have endeavoured to do me, by your damn'd falſe Inventions and Oaths: And while I was, after this Sort, talking to him, he interrupted me, bidding me conſider of it againſt the Afternoon, when he ſaid I ſhould be call'd for before the Committee of Lords; and ſo took his Leave, and went away.

November 8, 1678.

In the Afternoon of the ſaid *Friday*, being the Eighth of *November*, 1678, Capt *Richardſon* ſent for me out of my Chamber, and cauſing a Pair of Irons to be put upon my Legs, he ſearch'd me, and took what Papers he found in my Pockets, into his Poſſeſſion, and immediately carried me to the Committee of the ſame Lords as before at my Lord Privy-Seal's Chamber, adjoining to the Parliament-Houſe; where having waited without ſome Time, the Lords ſent for me into the Room, where I found a Perſon ſtanding on the far Side of the Table, with a blackiſh Perriwig, and a Campaign Coat (and whom I ſince underſtand to be Mr. *Bedlow*);

Bedlow); he came toward me at my coming in, looked me earneſtly in the Face, ſaluted me, which I returned, and ſo went again to the further Side of the Table; and theſe Queſtions were aſked, and thus anſwered:

Ld. *Shaftſbury*. Mr. *Atkins*, Do you know this Gentleman?

S. Atkins. No, my Lord, I don't know I ever ſaw him in my Life.

Mr. *Bedlow*. I believe, Sir, I have ſeen you ſomewhere, I think, but cannot tell where: I don't, indeed, remember your Face.

D. *Buckingham*. Is this the Man, Mr. *Bedlow*? *(Pointing to me.)*

Mr. *Bedlow*. My Lord, I can't ſwear this is he; 'twas a young Man, and he told me his Name was *Atkins*, a Clerk, belonging to *Derby*-Houſe, but I cannot ſwear this is the ſame Perſon.

Ld. *London*. Where were you, Mr. *Atkins*, on *Monday* the Fourteenth Day of *October* laſt, between Nine and Ten at Night?

S. Atk. I can't well remember, my Lord, but I ſuppoſe at Home, for I am ſeldom out at that Time of Night.

Ld. *London*. Were you in the *Pell-Mell*, or that Way, that you remember?

S. Atk. No, my Lord, I believe verily not.

(Hereupon, the Gentleman, Mr. Bedlow, *was ordered to withdraw; and my Lord* Shaftſbury *calling me to him, ſaid to me;)*

Ld. *Shaftſbury*. Mr. *Atkins*, if you are innocent, you're the moſt unfortunate Wretch living. Pray attend to what I ſay; I aſſure you, 'tis good News for you. There remains but one Way in the World to ſave thy Life, and that I would have you make Uſe of; and you may do it without Injury to yourſelf, if you will. Confeſs all you know, and make a Diſcovery of this Matter, and your Life ſhall be ſaved.

S. Atk. My Lord, had I any to make; could I ſay one Word, more or leſs, in this Matter; or were I at all guilty in any Part of it, I ſuppoſe you'll pleaſe to believe, that the Horror of my Conſcience, and the Puniſhment I ſhould juſtly expect from God and Man, for ſuch Offence, would lead me to make an ingenuous Confeſſion, to ſave my own Life, that I might thereby get Time to repent, and beg Forgiveneſs from God Almighty. But as I am innocent in every Part of what is ſaid about me, I hope you'll neither adviſe, or deſire me to go about to wrong my Conſcience, or ſtain my Soul, to endeavour to live a few Moments in this World, and to avoid Death for a Time, which will, at length, overtake every body. I aſſure your Lordſhips, my Prayers are to God Almighty, to give me Grace and Strength to go through to the laſt, and rather ſuffer a Thouſand Deaths, than as much as tell a ſolemn Lye to the Prejudice of any Perſon.

Ld. *Shaftſb*. Then I tell you what, Mr. *Atkins*, and that I ne'er ſaid to you before; ſince you are ſo gallant, I aſſure you, you'll either be hang'd, or knighted; if the Papiſts riſe and cut our Throats, you'll be knighted; if not, you'll be hang'd. Here's firſt what you ſaid to Mr. *Atkins*, and then this Gentleman's Oath, which though not poſitive, yet with ſuch Circumſtances againſt you, as I doubt, whether a Jury, in this Caſe, won't find you Guilty; beſides other collateral Circumſtances there may be: And another Thing there is, that there are ſeveral others, well known to this Mr. *Bedlow*, to have been concerned in it.

D. *Buckingham*. And are here in the Houſe, in Cuſtody.

Ld. *Shaftſb*. And if one of thoſe ſwear you were in it, all the World cannot ſave you.

S. Atk. My Lord, my Prayers are, and ſhall be, that one Perſon may but be detected who was really in the Murder, and I am ſure I ſhall be acquitted; and I cannot ſuffer, but from the Thing's being miſplaced.

D. *Buck*. Oh, he'll confeſs nothing, he expects a Pardon.

Ld. *Shaftſb*. I'll ſecure him from that, I warrant you; there's Three Hundred to One.

S. Atk. My Lord, I expect no Pardon, but deſire Death when I am found to deſerve it: I have nothing to truſt to but my Innocence, next to the Goodneſs and Juſtice of God Almighty, to whom I commit myſelf.

(After this, I was directed to withdraw, and the Keeper ordered to carry me back to Priſon, which was accordingly done.)

Memorandum. The Depoſition made this 8th of *November*, 1678, before the Lords of this Committee, by Mr. *Bedlow*, concerning this Matter, hereafter follows in the expreſs Words thereof; as they were reported by the ſaid Committee to the Houſe of Lords, and entered in their Journal Book, *viz*.

Die Martis, 12° Novembris, 16 78.

The Examinations taken, November *the 8th*, 1678, *at the Committee of Lords, for enquiring into the Murder of Sir* Edmundbury Godfrey, *were read as follow:*

William Bedlow, being ſworn in the Lords Houſe, was called in and examined, ſaith on his Oath, That this Examinant being treated with by Mr. *Leefaire*, and Mr. *Welch*, who are two Jeſuits, about the Beginning of *October* laſt, they offered him a Reward of 4000*l*. if he would be one of the Four, or Six, that ſhould kill a Man, that was a great Obſtacle of their Deſign; he, this Deponent, promiſed to be one to do it, upon their giving him Notice. Afterwards, *(viz*. the *Friday* before Sir *Edmundbury Godfrey* was miſſing) Mr. *Leefaire* met him, this Deponent, about Four of the Clock, in *Grays-Inn-Walks*, and appointed to meet him again in the ſame Place, about Four of the Clock the next Day, to do that Buſineſs: That upon taking the Sacrament to do it, he, this Deponent, ſhould have the Money paid to himſelf, or any Friend he ſhould name; but he, this Deponent, not liking the Deſign, failed of meeting him: The next Night after, being *Sunday*, he met Mr. *Leefaire*, again, by Accident, in *Fleet-Street*, going into *Red-lion-Court*, about Five of the Clock; Mr. *Leefaire* then deſired him not to fail of meeting him the next Night (being *Monday*), about the ſame Hour, at the *Palſgrave's-Head* Tavern, that he might employ this Deponent in ſome other ſpecial Buſineſs; but this Deponent came rarer than the Time appointed, and ſo failed to meet him there, but left Word at the Bar of that Tavern, that he would meet him at Eight of the Clock in the Cloiſter of *Somerſet-Houſe* Court; and accordingly, betwixt Eight and Nine of the Clock, this Deponent came thither, and found *Leefaire* walking there, who ſaid, he had ſtay'd almoſt an Hour for him; they paſſed the Time there about Half an Hour, *Leefaire* telling him how much the Church of *Rome*, and the Pope, were obliged to him, and what Rewards he ſhould have for his Secrecy and Fidelity to them.

Afterwards he deſired him, this Deponent, to walk into the Midſt of the Court, where he, the ſaid *Leefaire*, might ſay ſomething to this Deponent, and Nobody over-hear it; and there he told this Deponent, that the Perſon whom he was to kill, was killed, and his Body then lay in *Somerſet-Houſe*; and that he did believe, that the Excuſe which this Deponent had made him before, for not coming to the murdering of him, was real; and that he knew his Fidelity was ſuch, that he ſhould have half the Reward, if he would help to carry the Body to a Place where they had choſe to lay him.

This Deponent aſked to know firſt, Who were to be the Perſons that were to go with him? *Leefaire* told him, they were himſelf, Mr. *Walſh*, the Lord *Bellaſis*'s Gentleman, Mr. *Atkins* (*Pepys*'s Clerk), and one that he had often ſeen in the Queen's Chapel: Then *Leefaire* brought this Deponent by the Hand, in the Dark, through the Entry, unto that Room, which he ſhewed the Duke of *Monmouth*, and knocked ſoftly with his Finger at the Door; and when it was opened, *Leefaire* led this Deponent into it, which was dark: *Leefaire* then pulled a dark Lanthorn from under his Coat, and ſhewed a ſmall Light in the Room, where this Deponent ſaw the Perſons he before-mentioned; of whom this Deponent knew *Leefaire*, Mr. *Walſh*, and the other Perſon he ſaw often in the Chapel; and the other Two owned themſelves, the one to be the Lord *Bellaſis*'s Servant, and the other to be Mr. *Atkins* (*Pepys*'s Clerk).

And this Deponent ſaith, That they did agree to carry the Body in a Chair to the Corner of *Clarendon-Houſe*, and there to put him in a Coach, to carry him to the Place where he was found. Having concluded this, they agreed to carry him off at Eleven of the Clock the ſame Night: Then ſome of them turning about, they throwed off a Cloak that lay upon him, and ſhewed this Deponent the Body. This Deponent aſked them, who it was? They told him, it was an old Man, that belonged to a Perſon of Quality, who had taken ſome Examinations tending to the Diſcovery of their Deſign. This Deponent aſked them further, Why it was not proper to kill the Perſon of Quality himſelf? They anſwered, No; for this Man had the Examinations in his own Cuſtody; and that their Deſign of getting him thither, was to get him to ſend for them by fair Means or foul, and then they did not queſtion, but the next Examination would be ſo contrary to that, that it ſhould, upon their Trials, appear two ſeveral Stories; and when they ſhould be brought to Trial, upon the latter Examination, they would produce the former to contradict it, that it might ſeem Partiality to the World: Upon which Reaſons, this Deponent ſeeemed ſatisfied, and aſked them, Where they killed him? They told him, at *Somerſet-Houſe*. Then this Deponent begged their Pardon for Half an Hour, and he would wait upon them again; but this Deponent went away, and came no more: But the next Day, about Eleven of the Clock, this Deponent met *Leefaire* by Accident, croſſing *Lincoln's-Inn-Fields*, and then they went together unto the *Greyhound* Tavern in *Fleet-Street*; *Leefaire* (putting his Cane up to his Noſe) ſaid, He had ſomething to ſay to him: *Leefaire* there charged this Deponent for not coming the laſt Night, according to his Promiſe; this Deponent told him, He was not willing to come, becauſe he knew the Perſon: *Leefaire* then aſked him, Who it was? This Deponent told him, it was Juſtice *Godfrey*; *Leefaire* then acknowledged it was ſo, and he was willing to diſpenſe with this Deponent's not coming, if he would aſſure him of his Fidelity.

This Deponent then aſked *Leefaire*, How they got him thither, and where they found him? *Leefaire* told him, That himſelf, *Walſh*, and the Lord *Bellaſis*'s Gentleman, met him by the *King's-Head* Inn, in the *Strand*, croſſing the Street, in the Evening, before Five of the Clock, and told him That if he would pleaſe to go with them ſo far as *Strand-Bridge*, they would bring him to a Place near St. *Clement*'s Church, where there were a Company met, principal Plotters of that Deſign againſt the King, and there (if he would go preſently) he might take them, and the principal of their Papers; he anſwered, That he thought it not convenient to go himſelf, but he would ſend his Warrant, and the Conſtable: They told him, If he did make ſo much Delay, they might be gone; and that if he would walk up ſo far as *Strand-Bridge*, one of them would go and call a Conſtable to him there, and he might give his Order preſently: Whereupon, he walked with them ſo far as *Somerſet-Houſe*, and there they made a Halt: They told him, it would be leſs obſerved, if he walked in *Somerſet-Houſe*, than to ſtand in the Street; and thereupon, Two of them walked in with him, and the other pretended to go call a Conſtable; and when they had walked a Turn or two in the Court, Two more Perſons came forth, and ſhewed him into a Room, and when they had him ſecure there, they held a Piſtol to him, threatening, if he made a Noiſe, they would ſhoot him, but if he would anſwer their Expectations, they would do him no Harm. Then they aſked him to ſend for thoſe Examinations he had taken about thoſe that were committed; he anſwered, They were not in his Power, for he had ſent them to *Whitehall*. Upon that, and his refuſing to anſwer other Queſtions, they ſeized him, and ſtifled him with a Pillow, and ſo they thought he had been dead; but coming into the Room ſome Time after, they found him ſtruggling, and then they ſtrangled him with a long Cravat (which Cravat this Deponent ſaw the *Monday*, at Night, about his Neck). Then this Deponent aſked *Leefaire*, Why they carried him into the Fields? Or what they deſigned by it? He anſwered, that they had made a Wound in his Body, and laid his Sword by him, that it ſhould ſeem he had killed himſelf; and that they did not queſtion, that the Diſcovery of killing him would ever have been made; neither did they doubt, but that their Deſign would have its Effect. Then *Leefaire* told this Deponent, That as he would be anſwerable to *Chriſt Jeſus*, at the laſt Day, he ſhould be faithful to the Cauſe; and ſo they parted.

The

The ſame Time, Mr. *Atkins* being called in before Mr. *Bedlow*, Mr. *Bedlow* ſaith, That he is, in all Things, very like the Perſon he ſaw in the Room with Sir *Edmundbury Godfrey*'s dead Body; and he doth verily believe it was him that owned himſelf to be *Pepys*'s Clerk; but becauſe he never ſaw him before that Time, he cannot poſitively ſwear it, but he doth verily believe him to be that Man.

On *Friday*, the aforeſaid Eighth of *November*, in the Evening, I was brought back to Priſon in Irons (which I kept on till the *Monday* following, but were then, by the Favour of Capt. *Richardſon*, taken off), and remained that Night in Capt. *Richardſon*'s Houſe; the next Day was removed thence into the Preſs-Yard, where I continued kept very cloſe till *Monday* the Eleventh of *November*, 1678.

November 11, 1678. *Monday* Morning, being the Eleventh of *November*, Capt. *Atkins* made me a ſecond Viſit, and ſaluting me with the Good-Morrow, aſked if I had been before the Lords? I told him, Yes I was, laſt *Friday*, and ſaw a Perſon there I knew not, nor he me, nor did he ſwear any Thing (that I knew) againſt me: Ay, ſays he, but he has ſince that, in the Houſe of Commons, on *Saturday* Night, ſwore, that you were at *Somerſet-Houſe* when Sir *Edmundbury Godfrey*'s Body lay there; and my Uncle, *Phil. Howard*, bid me come to you, to tell you of it, that you may conſider, and confeſs what you know before it be too late. After which Sort he earneſtly ſeemed to preſs me to ſay ſomewhat. I told him, My laſt Breath (if I ſuffer) muſt and ſhall agree with what I ſaid at firſt, of my being unable to ſay any Thing of this whole Matter, more than the unborn Child. Pray, Capt. *Atkins*, who is this Man? Why, ſays he, his Name is *Bedlow*. Who is he, pray? Is he a Man of any good Fame? No, anſwered he, I think of no very good Fame. Do you know him, pray? Yes, ſays he, I have known him three or four Months, but have no very great Acquaintance with him *(Obſerve, he at firſt told me, he never ſaw him but once)*. Pugh, ſays he, I don't believe a Word he ſays; they are all Shams; he is certainly hired by thoſe that did it. Do you think ſo, ſays I? Ay, ay, ſays he, trouble not yourſelf about it. And ſo he took his Leave of me; telling me, he believed I ſhould be called again before the Lords.

Novemb. 12, 1678. The next Day Morning, being *Tueſday* the 12th of *November*, four Gentlemen of the Houſe of Commons came to me to *Newgate* (two of whom only I knew, Mr. *Sacheverel* and Col. *Birch)*, and having ſent for me to them in Capt. *Richardſon*'s Houſe, they told me the Occaſion of their coming, and in what a deſperate Poſture my Life lay in, ſo as there ſeemed no Poſſibility to expect the ſaving of it, but by pouring myſelf out in a Confeſſion to them; and ſo aggravated the Murder, with its (indeed) ill Circumſtances, and aſked me, what I had to ſay? I firſt told them, I heartily wiſhed I could give them any Light in it, I ſhould deem myſelf very happy, to be ſo enabled to acquit myſelf of the Duty I owe to his Majeſty, and the Intereſt of this Nation; but I was purely innocent, and whatever hath been ſworn againſt me (let it be more or leſs, and by more or fewer Hands), might with the ſame Truth be ſworn againſt a Man who never was on this Side *York*: So deſiring their Patience, I briefly run over to them what had happened at my ſeveral Examinations before the Lords. They aſked me then, Whether I knew one *Welch*, or *Prichard*? I told them, No, nor ever heard of them that I remembered. Whether I remembered no Circumſtance on *Monday* about a dark Lanthorn? My Anſwer was, No; that I had not ſeen one, as I remembered, many Months. Whether I was not then at *Somerſet-Houſe*? I ſaid, No; neither then, nor any Time before or ſince in my whole Life. How, and where, I ſpent my Time the *Saturday*, *Sunday*, and *Monday*, the 12th, 13th, and 14th of *October*? I anſwered, I could not preſently tell, but could ſoon recollect. They told me, I did not ſeem to have ſo ill a Memory. I ſaid, I ſuppoſed moſt would be found to have as ill to anſwer ſuch a Queſtion. Some other little Queſtions they aſked, and I made true Anſwers to, though not to their Satisfaction; and ſo they left me, aſking me over again, juſt at their Departure, very ſeriouſly, If I knew any Thing of the Murder, or the Plot? I avowed, with ſeveral Aſſeverations, I did not.

Upon my returning to my Chamber, I conſidered, and brought to my perfect Remembrance, how I had paſſed almoſt every Hour of thoſe aforeſaid three Days: And ſo I remained there without hearing from, ſeeing or ſpeaking with any Creature, till *Thurſday* the 21ſt of *November*, 1678.

Novemb. 19, 1678. On *Tueſday* Morning, being the 19th of *November* (in the Interval), my Keeper comes to me, and bidding me riſe, and dreſs myſelf, which I accordingly did, he puts a great Pair of Irons on my Leg, and told me, I muſt go then to have my Trial at the *King's-Bench* Bar. Lord, ſays I, I wonder I had no forehand Notice of it; I have no Witneſſes ready: He anſwered, He could not help it, but go I muſt. After I had been ready about an Hour, expecting their calling me down, my Keeper comes up, and informs me of the Miſtake, the Order being for one Mr. *Staly* to be brought up, and not me; but that on the Morrow I ſhould prepare to go. The Morrow comes, I hear nothing of it.

Novemb. 21, 1678. The following Day, being *Thurſday* the 21ſt of *November*, my Siſter, and a Gentleman of my Acquaintance (having Relation to the Law) Mr. *Hayes*, came to ſee me with a Keeper, by Order from my Lord Chief-Juſtice, and brought me ill News of what *Bedlow* had ſworn againſt me, and the little Hopes there remained of ſaving my Life; but that they were doing all they could for me, towards the making my Defence, and ſo ſhewed me a Paper they had drawn up (by Collections they had made from ſeveral People in whoſe Company I ſpent the Time), of my paſſing the 12th, 13th and 14th Days of *October*, which agreed with what I had done in my Memory in Subſtance, and different in no eſſential Circumſtance: And ſo they left me, bidding me conſider what I had to ſay, for that my Trial would be in a Day or two.

Accordingly having the Uſe of Pen, Ink and Paper given me, by Order from my Lord Chief-Juſtice, I ſet upon drawing up in Writing, what I had to ſay in my Defence, and did it in a little Time as well as I could. In the mean while a Grand Jury was ſummoned, and a Bill found againſt me at the *King's-Bench*, for a Principal in the Murder of Sir *Edmundbury Godfrey*; but (upon what Occaſion I know not) my Trial came not on this Term. Preſently, after 'twas over, Captain *Richardſon* ſent for, and took from me (by Order I ſuppoſe) all the Papers I had drawn up preparatory to my Trial, and carried them (I have great Reaſon to believe) before the Committee of Lords, who, I ſuppoſe, from thence having learnt who were the Witneſſes I ſhould have to prove the Expence of the Evening on *Monday* the 14th of *October* (the very Time Mr. *Bedlow* accuſes me to have been at *Somerſet-Houſe*), found out where they lived, ſent for them by a Meſſenger to attend them, and in Mr. *Bedlow*'s Preſence, and the King's Counſel, having put them all to their Oaths, examined them diſtinctly and croſsly, about all they could ſay relating to me, and my paſſing my Time, where, and with whom, on the ſaid *Monday* Night.

I remained in Priſon till the following Term (two Seſſions of Gaol-Delivery having paſſed), beginning the 23d of *Jan.* 1678-9, and deſiſted from moving in Court for my Trial, till the latter End of it, being in Expectation I ſhould be brought to it without Trouble or Charge to myſelf. January 23, 1678-9.

But finding no Intention, or Preparation for it from the Attorney-General (whom we conſulted in it, and deſired not to oppoſe us in our Motion in Court for a Trial), on *Thurſday* being the 6th of *February*, a Motion was made for my being tried before the End of the Term, and granted, the King's Counſel declaring their being ready on his Part: Purſuant thereto, another Motion was made, the next Day, being *Friday*, for my being brought to the Bar on the Morrow after to be arraigned, in order to my Trial. February 6, 1678-9.

Accordingly on *Saturday* Morning, I was brought thither and arraigned upon a Bill found againſt me, juſt before my coming to the Bar, as Acceſſary to the Murder of Sir *Edmundbury Godfrey*: After the Indictment was read, I aſked the Court when my Trial would come on? And was anſwered by my Lord Chief-Juſtice, that he thought on *Monday*: Then I moved his Lordſhip and the Court, that a Rule of Court might be granted for the bringing in thither againſt my Trial, ſuch Papers as were in the Hands of either of the Secretaries of State, Clerk of the Houſe of Lords, or Recorder of the City of *London*, relating to my Affair; and had for Anſwer, that 'twas not proper to grant a Rule of Court for it, but they doubted not, if I had the Attorney-General attended about it, he would ſee I ſhould receive all that was juſt and fit for me therein. After I had done ſpeaking, my Lord Chief-Juſtice aſked, if I was, or ever had been a *Papiſt*? To which anſwering No, I was directed to withdraw, and ſo went back to Priſon. February 8, 1678-9.

On *Monday* Morning I was brought again to the Bench-Bar, in Company with Mr. *Hill*, *Green*, and *Berry*, three Perſons accuſed by Mr. *Prance*, as Actors in the Murder of Sir *Edmundbury Godfrey*, and after a ſhort Stay there, the Court directed I ſhould be carried aſide, till the Trials of thoſe three Perſons were over; and accordingly I was ſo. About three of the Clock in the Afternoon, their Trials being ended, I was called to the Bar, and my Lord Chief-Juſtice told me, their Trials had taken them up ſo much Time, and it being ſo near the End of the Term, I muſt be content to ſtay till the Seſſions for mine; and ſo aſked me if I had Bail ready, and my Liberty ſhould be had thereupon. I anſwered, I was better prepared for my Trial, than with Bail, and inſiſting upon the Hardſhip I had endured in a long Impriſonment, earneſtly begged for my Trial. His Lordſhip told me, their Buſineſs could not all be put off for mine, and I muſt be contented. I thereupon was propoſing Bail to the Court, while Captain *Lloyd*, one of my Witneſſes, ſtood up and told them, he was, and had been detained a conſiderable Time in Town to give Evidence for me, and could not poſſibly be in *England* at the next Seſſions; which I alſo backed with Aſſurances, that 'twas his, and ſeveral other of my Witneſſes Caſes, whoſe Occaſions indiſpenſably called them away: Upon which, the Morrow-Morning, very early, was appointed for my Trial, and ſo I was directed to withdraw, and went back to Priſon. February 10, 1678-9.

On the Morrow-Morning, being *Tueſday*, the 11th Day of *February*, 1678-9, I was accordingly brought to the Bar, and arraigned with Two indictments, one as Principal, the other as acceſſary to the Murder of Sir *Edmundbury Godfrey*, and after very full hearing of the Evidence againſt me, and being ſuffered to ſay very little of the great deal of Matter I had to urge in my Defence, the Jury (who were all Gentlemen of Quality of the County of *Middleſex)*, without ſtirring from the Bar, gave their Verdict in, NOT GUILTY: And I was thereupon immediately ordered to be diſcharged. February 11, 1678-9.

NUMBER

NUMBER XVIII.

Some Obſervations upon the late Trials of Sir GEORGE WAKEMAN, CORKER, *and* MARSHAL, *&c.* *

[*By* Tom Tickle-foot, *the Taborer, late Clerk to Juſtice* Clodpate.]

THE Reader may perhaps wonder why I ſhould wave the Employment of Clerking to a *Weſtminſter* Juſtice, who ſeldom are of the wiſeſt, and turn Minſtrel; but upon ſerious Thoughts he will reſpect me for my Integrity, and give greater Faith to what I ſhall offer now; for to ſay the Truth, the Methods of my former Life were ſo villainous, in order to my Calling, as I could no longer diſpenſe with them; for I was forced to inform my Maſter's Worſhip of all the Bawdy-Houſes within his Diſtrict, which by that Means were all ſet under Contribution, and out of their Compoſitions for Enormities I had Poundage, which was all my Subſiſtence, for his Worſhip engroſſed all the Warrant-Revenue to himſelf; ſo I grew of late melancholy, through the failing of Trade, the private Miſſes driving all before them, that publick Sinners are now of all People the moſt miſerable; ſo I retired ſome time before my Maſter's Death: In which Retirement, as Barbers have nothing to do, learn to play on the Cittern, I got a Stroke upon the Pipe and Tabor, by which Means I now live very comfortably; yet willing to give the World a Taſte of my old Office of Clerkſhip, I have made theſe following Obſervations;

The firſt Part of the Trial was ſpent in the Examination of *Dugdale*, *Prance*, and *Jenniſon*, to prove the Plot, ſo to obviate the common Objection, that it was unreaſonable to believe two Men againſt ſo many, upon bare Teſtimony, without other circumſtantial Evidence, that was done with ſuch Notoriety, as ſatisfied all unprejudiced Perſons: Among other Things, it was proved, by an undeniable Witneſs, Mr. *Jenniſon*, corroborated with notable Circumſtances, that *Ireland* died with a Lye in his Mouth; as by Conſequence Sir *John Southcot* and his Lady live with the ſame Veracity, which my old Maſter would have made another Kind of Uſe on than was made: Then were ſome fine Harangues about it, to anſwer ſome Objections; yet nothing was reduced to Practice in the Caſe during that Part of the Trial, in which the Priſoners were but remotely concerned. It may be obſerved, that *Corker* fell into great Undecencies of Paſſion againſt the Witneſs *Dugdale*; an Argument of Guilt, my old Maſter would have ſaid; yet no Inferences nor Reproofs upon it. Now I have given a ſhort, yet true Account of what was but preliminary to *Wakeman*'s, and their Trials, I ſhall go on. Doctor *Oates* proved, that *Wakeman* refuſed Ten Thouſand Pounds, as too little for poiſoning the King; which he termed ſo great a Work, and afterwards did undertake it for Five Thouſand more, as it was written down in the Entry-Book, kept ſometimes at *Wild-Houſe*, ſometimes at *Langhorn*'s Chamber: And further, as appeared by the ſaid Entry-Book, there were Five Thouſand Pounds paid in Part, and a Receipt ſubſcribed *George Wakeman*, which, by a Compariſon of Hands, was ſworn to be Sir *George*'s Hand; which Sir *George* ſhifted off by the Help of an Apothecary, as he thought well enough; yet granting the Apothecary to ſay true, which is queſtionable too, for they are often ſlippery Chapmen, eſpecially conſidering former Relations, and future Hopes; and *Oates* to ſwear true, which no wiſe Man will diſpute, there might be two Letters, which Sir *George* would ſlur off, from the Improbability of writing two Letters to one Thing, and gravely bids the Jury take Notice that he writ but one Letter; he might with the ſame Modeſty have adviſed them not to believe a Word againſt him; yet little Notice taken.

The Improbability of writing two Letters to one Thing, ſeemed to weigh ſomething with the Lord Chief Juſtice; though not ſo with Juſtice *Pemberton*, who ſaid, *It might be ſo, to ſerve a Turn, very well.*

It was proved likewiſe by Dr. *Oates*, that *Wakeman* had a Commiſſion to be Phyſician-General to the new Army; which my Lord Chief Juſtice had like to have forgotten.

Amongſt other Matters, *Bedlow* depoſed, That Sir *George Wakeman* came into *Harcourt*'s Chamber in a Chaſe, and told him, he knew not whether he ſhould go on or no. *Harcourt* went to his Cabinet, and took out a Bill, and aſked Sir *George* if he was ready? Sir *George* ſaid he was, and had been long ſince, but they were not punctual with him; but what have you there? A Bill for two thouſand Pounds at your Service, replies *Harcourt*. Which Bill Sir *George* accepted, and afterwards told *Bedlow*, that the Goldſmith had allowed of it, and would pay him in the Afternoon. When *Wakeman* objected, it was not likely he ſhould diſcover ſo great a Secret upon ſo ſmall an Acquaintance; *Bedlow* replied, He would have a hundred Times more, if *Harcourt* had but told him he was his Confidant, as he had done then. *Wakeman* rambled out into a Paſſion, and ſwore that he never ſaw him in all his Life: Yet *Bedlow* made it out by Circumſtances, that he had taken Phyſic of him at the *Bath*; and that Acquaintance he did not deny, but called him Rogue, *&c.* Before the Priſoner called his Witneſſes, it may be obſerved, that the Lord Chief Juſtice ſaid, that *Bedlow*, the ſecond Witneſs, ſaid no Material Thing againſt *Wakeman*, but only ſome Circumſtantials about a two Thouſand Pound Bill; but had not ſaid for what, only ſome Things about the Queen, his Lady and Miſtreſs.

Sir *Robert Sawyer* replied, Under Favour, and began to ſum up *Bedlow*'s Evidence; ſo the Lord Chief Juſtice ſeemed not pleaſed, and anſwered, What is all this? Call Mr. *Bedlow* again. To whom he made a godly Speech about innocent Blood, and bade him give his Evidence anew; who gave what is above ſaid. Sir *George* replied, What if the Queen had given me two thouſand Pounds for my Service done her, is that any Harm? I have deſerved it, I am ſure, for nine Years Service; yet a little before he made a Proteſtation before God, he never ſaw *Bedlow*; a likely Matter, as if an abſolute Stranger ſhould come to the Knowledge of ſuch a Money-Circumſtance, and agree in the Sum too. *Bedlow* went on, and ſwore, that *Harcourt* ſaid to Sir *George*, *This muſt be well followed, and cloſely obſerved; becauſe much depends upon it: For if we ſhould miſs to kill him at* Windſor, *or you miſs in your Way, then we will do it at* Newmarket. The Lord Chief Juſtice made *Bedlow* repeat the Words again; which he did, only interpoſing [*Which we hope you will not*]. The Lord Chief Juſtice replied very modeſtly, He ſays now quite another Thing; but was contradicted by the Lord Chief Juſtice *North*, the Recorder, and Sir *Robert Sawyer*, and ſubmitted to it moſt Chriſtianly. Then *Bedlow* went on, and ſwore, that Sir *George Wakeman*, in his Hearing, declared his Conſent; and that it was one entire Diſcourſe: Upon which the Knight, as well he might, ſaid to the Priſoners, *Then is my Buſineſs done*; and he had been a true Prophet, if either Wit or Honeſty had exerciſed a due Dominion over the Jury. Now if my old Maſter *Clodpate* had been on the Bench, he would have hung hard upon that Expreſſion, as alſo upon Sir *George*'s allowing of two thouſand Pounds to be paid for Wages; he would have ſwaggered it, and have ſaid, This is not to be ſaid to us that know the Methods of the Court, never to pay ſo much Wages at a Time, they always inſtance ſuch Sums; you might, however, have brought ſome other Authority beſides yourſelf, which can deſerve no Credit here, when it is clear by all Circumſtances you invoke God to witneſs to a Lye, about your never ſeeing *Bedlow*, within theſe ten Minutes.

Againſt *Corker*, *Oates* depoſed, That he ſaw his Patent from *Rome* to be Biſhop of *London*; that he was privy, and did conſent to *Langhorn*'s Propoſal to the *Benedictine* Monks, to advance ſix thouſand Pounds towards carrying on his Deſign, his Conſent being neceſſary, becauſe he was Preſident; and that *Corker* ſhould ſay further, that he carried on the Deſign under the Diſguiſe of beſtowing the Queen's Charity; and that he did except againſt *Pickering*, being choſen to kill the King, being that a mere Layman was more proper. Mr. *Marſhal* was charged with the ſame Thing, and that *Marſhal* went Half with *Conyers*, who laid a Wager that the King would eat no more *Chriſtmas* Pyes.

Bedlow depoſed further againſt *Corker*, That he had heard him diſcourſe about raiſing an Army, but nothing poſitively to the Murder of the King. *Bedlow* accuſed *Marſhal* much about that Rate; but *Marſhal* not being ſhy of his Liplabour, fell to impertinent queſtioning him about his knowing him; but was confuted (but not at all aſhamed in his Lyes) by Sir *William Waller*, who was ſworn in the Caſe; but *Marſhal*, with a Company of ſoft Words, would have perſuaded Sir *William* that he foreſwore himſelf; the Prieſt ſurely loved to hear himſelf prattle, to ſpend ſo much Time in the waſting of his Credit, about a Thing which was not of a Farthing Concern, true or falſe: Then he aſked *Bedlow*, whether he had ever ſeen him before he was taken? Who ſaid, At the *Savoy*. Then with an unheard-of Impudence he replied, He would be content to be hanged, if *Bedlow* could prove that he was ever at the *Savoy*. *Bedlow*, though he had none by to prove that, as perhaps he would have been in the ſame Caſe if he had been to have proved himſelf ever to have been in *Weſtminſter-Hall*, as the Lord Chief Juſtice intimated; yet he did it by a ſufficient Circumſtance, when he gave Sir *William Waller* Directions where to ſearch for the Gun that was to have killed the King; which was found accordingly. This is now the Subſtance of what the Priſoners, *Wakeman*, *Corker*, and *Marſhal*, were charged with: The other, *Rumley*, had but one Witneſs againſt him; ſo went off on Courſe. Sir *George* now called his Witneſſes; the chief was *Chapman* the Apothecary, of which I have given a former Account. Then was his Man *Hunt*, and *Elizabeth Henningham*, called, who talked at the Apothecary's Rate; ſo that *Oates* was not at all contradicted by them, but they might both ſay true, and that the Chief Juſtice told them. Then Sir *Philip Lloyd* was called upon by Sir *George Wakeman*, to adjuſt what Dr. *Oates* ſhould ſay at the Council-Table; who ſaid, but not upon Oath, that when Sir *George* was called in before the Council, and told of his Accuſation, he utterly denied all, and did indeed carry himſelf, as if he were not concerned at the Accuſation. Then *Oates* was called in, to tell what he knew further; for as yet he had given but a hear-ſay Evidence (as my old Maſter uſed to term it), he replied with lift-up Hands, God forbid (for I muſt tell truth, ſays Sir *Philip Lloyd*, let it be what it will) that I ſhould ſay any Thing againſt Sir *George Wakeman*; for I know nothing more againſt him. *Oates* replied, He knew nothing at all of this. Sir *George* triumphed, and cried, This is a Proteſtant Witneſs. Now had old Juſtice *Clodpate*, my old Maſter, been upon the Bench, he would have taken up the Knight, and told him, he had given a very officious Teſtimony; for he was to tell only what *Oates* ſaid at that Time, and not to pretend to Skill in Phyſiognomy; for he was not mealy-mouthed, but would upon Occaſion have talked his Mind to Knights, or any Body, and would have ſaid further, It appears to me, and may appear to any Body elſe, that this Knight has as great a Kindneſs for Sir *George* as for Truth, and have bidden the Jury obſerved accordingly; he would not have left there neither, for he would have ſaid, Admit Sir *Philip* ſays true,

* This ſhould be read after *Wakeman*'s Trial, Vol. II. Page 957. and is the Pamphlet that *Francis Smith* was tried and convicted for publiſhing: See his Trial, Vol. II. Page 1036.

true, and that is as kind to him as can be, what would Sir *George* infer, That Mr. *Oates* is now tied up in his Evidence? By no means, for the Caſe is no more than if a Man be brought before a Juſtice of Peace for ſtealing a Cow, and that Witneſs makes a ſolemn Proteſtation, that he knows no more againſt him; yet afterwards, upon his Arraignment, ſwears to a Horſe too; in another Bill of Indictment, the former Aſſeveration is atteſted by his Worſhip's Clerk, *quære*, Whether that will quit him for the Horſe, or ought to be ſo much as heard in a Court? Beſides, here has been a late judged Caſe, *Whitebread* and *Fenwick*'s, the Jury was withdrawn for want of full Evidence, afterwards one of the ſhort Evidences came to ſwear home, and was admitted, the Priſoners found Guilty, and executed accordingly; if that was right, as no queſtion it was, becauſe practiſed, as I have been informed, it muſt be much more in the right now to admit of *Oates* his further Teſtimony, for the Council-Table is no Court of Record, as this is.

Sir *Thomas Doleman* was called in for *Oates*; who ſaid, that *Oates* at that Time was in great Diſorder and Confuſion, and as feeble as ever he ſaw any body in his Life, ſo as he believed he could not give any body a good Anſwer; and further ſaid, that *Wakeman* was called in, and gave his Anſwer, at which the Council was amazed; for he did not in his Opinion deny it ſo poſitively as one that was innocent could, but ſhuffled Matters off with Expreſſions of the great Loyalty and Services to the Crown of himſelf and Family, and required Reparation for Injury done. It ſeems Sir *Philip* and Sir *Thomas* had different Sentiments about Sir *George*'s Mien. When Sir *Thomas Doleman* had done, Sir *George*, unbidden, fell into a Repetition of what he had ſaid at the Council-Table in his Defence; which reſolved only into a telling what a good Subject he had been for the King, what Work his Brother made at *Worceſter*, how his Father loſt Eighteen thouſand Pounds Eſtate for the King, how he was in a Plot for the King, was taken at his Apothecary's, ſome Arms found in the Cellar, carried to Priſon, and in much danger of being hanged; and how his Family was mighty inſtrumental in the ſaving of the King, as Colonel *Gifford*, his Couſin *Carlos*; and that the *Pendrels* were menial Servants to the Family.

Then *Corker* was called; who began with a florid Diſcourſe reflecting upon the Witneſſes, that they had been Men of ſcandalous Lives, and that there was no Plot; which he flouriſhed off as well as he could, but not to any reaſonable Satisfaction; then he came to trifling about going to *Lamſpring* in *Weſtphalia*, and ſuch other ſmall Matters; but at laſt he ſaid, he was not Preſident of the *Benedictines*; which was material, had it been well proved, for it obviated Mr. *Oates* his Accuſation of conſenting to the Six thouſand Pounds as Preſident. Then *Marſhal* was called to ſay for himſelf; who made a great Pother about a white Spot under his Perriwig, and Sir *William Waller*'s ordering him to put it off; and many Inferences he would have made; and then made a great Stir about Witneſſes that could have come within three Days, and many other Things to no Purpoſe. Then *Corker* called his Witneſs, *Nell Rigby*, to prove that he was in the *Savoy* when *Pickering* was taken; and that *Oates* and *Bedlow* did know ſo much: She likewiſe averred, that *Stapleton* was Preſident of the *Benedictines*, and *Corker* never officiated as ſuch; and that ſhe ſaw Mr. *Oates* once in the Houſe, who came a begging to Mr. *Pickering* for Charity, and that was in the midſt of the Plot, as was made out by Circumſtance; from whence *Marſhal* inferred, It was not likely they ſhould truſt him with any thing of that nature, and ſuffer him to want. This now muſt be a new Contrivance, for it would have been ſet up before in *Pickering*'s Trial, had there been any thing of Truth in it. I now wonder that none from the Bench ſet upon that Bitch-Fox, to run down her Teſtimony; for allow that to be true, the Plot is Nonſuit, *Semel inſanivimus omnes*; my old Maſter would have clawed the Threepenny Baggage, and told her her own, and likewiſe have broke her Credit with the Jury, by the Circumſtances, that it was never before offered; a thing that they could not be ſo careleſs in, had the thing been true. Now Mrs. *Sheldon* was called to prove *Stapleton* Preſident of the *Benedictines*; who accordingly did ſo. Then *Alice Broadhead* did the ſame.

Then Dr. *Oates* was called again, but never examined; he is wiſe that can tell why, without Somebody was afraid he ſhould have cleared the Point, as it was formerly in another Caſe about Mr. *Howard*'s Son.

Then the Court aſked them, if they had done all three? Sir *George Wakeman* fell to a deteſting, forſwearing, and abominating the Plot, and that he never had a Farthing for any ſuch Thing; *Corker* much at that rate; and *Marſhal* made an Harangue, that, had it not been for my Lord Chief Juſtice *North*, I believe would have laſted till now; it was all full of Proteſtations of the Innocence of the executed Perſons, which were fully anſwered by the Chief Juſtice *Scroggs*; who after ſome little trifling Velitations with the Prieſts, ſummed up the Evidence. In the firſt he proved, by Mr. *Jenniſon*, as has been hinted before, that *Ireland* died with a Lye in his Mouth.

Now a Man would wonder what he ſhould urge that for, unleſs to infer, That if dying Men in their laſt Breath would lye, why ſhould living Perſons be believed under their Circumſtances? Eſpecially when a Jury is free by the Law to do what they will without Blemiſh in the Caſe.

Then the Chief Juſtice goes on, and ſums up *Oates* his Evidence againſt *Wakeman*; which his Lordſhip, leaving or forgetting all the material Points, makes only circumſtantial: till Sir *Robert Sawyer* put him in mind of his Commiſſion, ſeen by *Oates*, to be Phyſician to the new Army; and then his Lordſhip goes on, and allows that, as likewiſe that he refuſed Ten thouſand Pounds, and would have Fifteen thouſand to do the Work; but, with an unuſual Sweetneſs, leaves the Truth with the Jury, and then falls moſt religiouſly into a Declaration againſt ſhedding innocent Blood: which he did ſo pathetically, as no Man would judge him to be the Son of a Father who, as Moderns ſay, was not very ſcrupulous in that Point.

Then he goes on to Mr. *Bedlow*'s Evidence; and though he ſummed it up a little ſhort, yet he makes him a ſecond Witneſs againſt *Wakeman*, if the Jury will believe him. Now conſidering theſe [*If's*] were never put before, why the Devil ſhould they now, would old *Clodpate* have ſaid; and ſo ſay I, *Tom Tickle-foot*.

And then the Chief Juſtice prays the Bench in Aid, if he had forgotten any thing material.

Then his Lordſhip was pleaſed to ſay, the Evidence againſt *Corker* was not full, ſo as to prove any Fact, but only ſome Words; and that he was not Preſident of the *Benedictines*, his Lordſhip affirmed from the Teſtimony of three Flingſtinks, without any Manner of Hint to the Jury that they were not upon their Oaths. The Charge againſt *Marſhal*, his Lordſhip ſaid, was rather leſs than againſt *Corker*; and ſo accordingly lightened it, as became him.

Then he comes to Sir *Philip Lloyd*'s Teſtimony, which he laid as great a Streſs upon as it would naturally bear; and, ſo as to invalidate any further Teſtimony againſt Sir *George Wakeman*, his Lordſhip was pleaſed to name Sir *Thomas Doleman*'s Evidence, but with ſo little Reſpect, as he might have as decently let it alone: And to invalidate *Oates* his Teſtimony further, he takes Notice that he was begging, without Intimation to the Jury of any Probability of the Matter, which muſt utterly deſtroy Mr. *Oates* for the future; for Nobody that believes that, can believe any thing he ſays of the Plot. And then, after a pious Exhortation to the Jury to take care of Innocent Blood, he concludes, telling them, That if they believe *Oates* and *Bedlow*, they may do well to find the Priſoners Guilty; otherwiſe not.

Bedlow charged the Chief Juſtice, for not ſumming up his Evidence right; who only replied, he knew not by what Authority this Man ſpeaks. I ſhall only make this Obſervation upon his Lordſhip: In all former Trials he went on without the leaſt Heſitation, or running the ſame over again, as he did not in this; eſpecially about the Concern of innocent Blood: But, by all that's good, it was my old Maſter *Clodpate*'s Diſeaſe, Peace be with him! always to ſham up an Evidence when any body had been with him the Morning before.

About an Hour after the Jury returned, and brought them in Not Guilty; but, according to their abundance of want of Underſtanding, enquired whether they might not bring them in guilty of Miſpriſion, or no? Now could ſuch a Thing come into their politick Pates, had they underſtood what the Word meant? For that implies a knowing of, but not conſenting to, a Treaſon. Now there was no manner of Colour for ſuch a thing; for the Evidence was full, if they believed them, as to abſolute Treaſon; if not, why would they think of any thing but Acquittal? But it may be they knew not the Force of the Word, which led them into that Error; I am ſure that's their beſt Plea; otherwiſe they muſt yield themſelves to be great Betrayers of their Nation, and lie under a damned Suſpicion of being foully practiſed upon; eſpecially if that be true that runs about in Coffee-houſes, That a Gentleman that went out amongſt them had a ſealed Paper of Fifty Guineas thruſt into his Hand.

They ſay in the North, That a Jury conſiſts of eleven Fools and a Knave: Now thoſe of the South, as being more refined Wits, are of a nobler Conſiſtence, as having more of the Knave in them; for had they had a mind to have examined Matters, and not barely to have acquieſced in outward Appearance, they might have conſidered, that *Oates* and *Bedlow* did not ſwear by Practice, like the Boys of St. *Omer*'s, from this Circumſtance, That *Rumley* had but one Witneſs againſt him. Now had Hanging, and not Truth, been the deſigned Matter, how eaſy a thing had it been for Captain *Bedlow* to have agreed with Dr. *Oates*, and made up two Witneſſes againſt *Rumley*, is obvious to every conſidering Capacity, and might have played ſuch a Prank formerly to have ſerved a Turn, when they were liſted amongſt the Pope's Mamalukes.

It is no ſmall Wonder, I confeſs, to *Tom Ticklefoot*, that Nobody from the Bench nor Bar hinted that Circumſtance; my old Maſter *Clodpate* would have been hanged before he would have miſſed ſuch a Barn-door.

I am more particular in this, to the end that Circumſtance of their not combining, may induce Juries for the future to look upon them as Men that ſwear only according to the Dictates of Truth, notwithſtanding the ſham Tale of the Doctor's begging at *Pickering*'s.

NUMBER

NUMBER XIX.

The Lord Chief-Justice Scroggs *his Speech in the* King's-Bench, *the first Day of this present* Michaelmas-Term, 1679, *occasioned by many libellous Pamphlets which are published against Law, to the Scandal of the Government, and Publick Justice: Together with what was declared at the same Time on the same Occasion, in open Court, by Mr. Justice* Jones, *and Mr. Justice* Dolben *.

I HAVE bound over this Man, *Richard Radley*, to his good Behaviour, and to appear here this Day, for saying false and scandalous Words of me, which are sworn to by two several Affidavits; *viz.*

William Lewis *maketh Oath, That on the seventh Day of* August, 1679, *there being a Difference between* Robert Raylett *and* Richard Radley, *he heard the said* Richard Radley *say to him the said* Raylett, *If you think to have the Money you have overthrown me in, go to* Weal-Hall *to my Lord* Scroggs; *for he has received Money enough of Dr.* Wakeman *for his Acquittal.*

Jurat. 4to die Septem. 1679, coram me, *Will. Scroggs.*

William Lewis.

Robert Raylett *maketh Oath, That there was a Trial at the last* Essex *Assizes between him and one* Richard Radley, *where he recovered Thirty-eight Pounds; and he happening to be at Work on the seventh Day of* August, 1679, *over-against the House of the said* Richard Radley, *the said* Richard Radley *told him, If you expect the Money you have over-thrown me in, you may go to* Weal-Hall; *for there is Money enough come in now.*

Jurat. 4to die Septem. 1679, coram me, *Will. Scroggs.*

Robert Raylett.

First, I would have all Men know, that I am not so revengeful in my Nature, nor so nettled with this Aspersion, but that I could have passed by this and more; but that the many scandalous Libels that are abroad, and which reflect upon Publick Justice, as well as upon my private self, make it the Duty of my Place to defend one, and the Duty I owe to my Reputation to vindicate the other.

And having this Opportunity, I think this the propereſt Place for both. If once our Courts of Justice come to be awed or swayed by vulgar Noise, and if Judges and Juries should manage themselves so as would best comply with the Humour of Times, 'tis falsly said, That Men are tried for their Lives or Fortunes; they live by Chance, and enjoy what they have as the Wind blows, and with the same Certainty: The giddy Multitude have Constancy, who condemn or acquit always before the Trial, and without Proof.

Such a base, fearful Compliance made *Felix*, willing to please the People, leave *Paul* bound; who was apt to tremble, but not to follow his Conscience. The People ought to be pleased with Publick Justice, and not Justice seek to please the People. Justice should flow like a mighty Stream; and if the Rabble, like an unruly Wind, blow against it, it may make it rough, but the Stream will keep its Course.

Neither, for my Part, do I think we live in so corrupted an Age, that no Man can with Safety be just and follow his Conscience: If it be otherwise, we must hazard our Safety to preserve our Integrity.

And to speak more particularly as to Sir *George Wakeman*'s Trial, which I am neither afraid nor ashamed to mention, I know that all honest and understanding Men in the Kingdom (speaking generally) are thoroughly satisfied with the impartial Proceedings of that Trial, taking it as it is printed; which was done without the Perusal of one Line by me, or any Friend of mine. Tho', by the way, I wonder by what Authority that arbitrary Power was assumed, to forbid any Friend of mine the seeing of it, before it was put out.

However, as it is, I will appeal to all sober and understanding Men, and to the Long Robe more especially, who are the best and propereſt Judges in such Cases, as to the Fairness and Equality of that Trial.

For those hireling Scribblers that traduce it, who write to eat, and lye for Bread, I intend to meet with them another Way, for they are only safe whilst they can be secret; but so are Vermin, so long only as they can hide themselves.

And let their Brokers, those Printers and Booksellers by whom they vend their false and braded Ware, look to it; some will be found, and they shall know that the Law wants not Power to punish a libellous and licentious Press, nor I a Resolution to execute it.

And this is all the Answer is fit to be given (besides a Whip) to those Hackney-Writers, and dull Observators, that go as they are hired or spurred, and perform as they are fed, who never were taught.

If there be any sober and good Men that are misled by false Reports, or by Subtilty deceived into any Misapprehensions concerning that Trial, or myself; I should account it the highest Pride, and the most scornful thing in the World, if I did not endeavour to undeceive them.

To such Men therefore I do solemnly declare here, in the Seat of Justice, where I would no more lye or equivocate than I would to God at the Holy Altar.

I followed my Conscience, according to the best of my Understanding, in all that Trial, without Fear, Favour, or Reward, without the Gift of one Shilling, or the Value of it directly or indirectly, and without any Promise or Expectation whatsoever.

This I say to honest Men (that know me not), if any that do know me needed this, they should not have had it, for they use me ill; he that knows me and doubts, so long thinks it an even Wager, whether I am the greatest Villain in the World or not; one that would sell the Life of the King, my Religion, and Country, to Papists for Money: And he that says great Places have great Temptations, has a little, if not a false Heart himself; for no Temptation is big enough for a Sin of this Magnitude.

I would not have the *Papists* now make any false Conclusions from what I say, That because I reprove the Insolence of some Men's Tongues and Pens, concerning this Trial, they should thence infer they have not had, or at least cannot expect fair Play, because some fooliſh Men cry out of their Acquittal, and think there is no Justice where there is no Execution.

They have had fair Trials, and some that have suffered have had the Ingenuity to confess it; and they shall still be try'd according to the Evidence, and the Probability and Credibility it carries with it.

But this I must say, he that thinks there is no Plot, is blind with Prejudice, or willfully shuts his Eyes.

The Priests and Jesuits had a Design to root out the *Protestant* Religion, and bring in *Popery*, and that is directly to overthrow the Government; and to effect this, that they would kill the King. Were there no more, their Doctrine and Practices go very far to prove it; and he that says the contrary, is as much out, as where in a printed Pamphlet he too confidently asserts, That in all their Papers that were searched, there was not one ill Letter found, or any thing that was suspicious. *Coleman*'s Letters, and the Letter found amongst *Harcourt*'s Papers, will never be answer'd; not by saying, That a Meeting so exactly appointed, with all Cautions imaginable (as not to appear too much about the Town, for fear of discovering the Design, which in its own Nature requires Secrecy), that this was only a Meeting to choose an Officer.

And yet to affirm, That this is not so much as suspicious at least, is a Confidence, that the Ingenuity of a Jesuit only will undertake to own.

However, in the mean Time, the extravagant Boldness of Men's Pens and Tongues is not to be endured, but shall be severely punished: For if once Causes come to be try'd with Complacency to popular Opinions, and shall be insolently censured if they go otherwise, all publick Causes shall receive their Doom as the Multitude happen to be possessed; and at length every Cause shall become publick, if they will but espouse it; at every Sessions the Judges shall be arraigned, the Jury condemned, and the Verdicts over-awed to comply with popular Noise, and undecent Shouts.

There are a sort of Men, I doubt, that too much approve and countenance such vulgar Ways, and count it Art and Stratagem, that embrace all Sorts of Informations, true or false, likely or impossible, nay, though never so silly and ridiculous, they refuse none: So shall all Addresses be made to them, and they be look'd on as the only Patrons of Religion and Government, though they should have but little of the one, and would maintain the other only so far as their own Share in it comes to.

These, Sir Politicks, (if such there are) deceive themselves as much as they do others, and are not what they imagine themselves to be, with understanding and honest Men; no not with those they think they gull neither, for they use them to serve their Purposes, as they think they serve others; and if ever Time shall serve, 'twill prove so.

Let us pursue the Discovery of the Plot, in God's Name, and not baulk any Thing, where there is Danger or Suspicion upon reasonable Grounds; but not so over-do it, as to shew our Zeal: We will not pretend to find what is not, nor stretch one Thing beyond what it will bear, to reach another; nor count him a Turn-coat, and not to be trusted, that will not betray his Conscience and Understanding, that will not countenance unreasonable Boldness, nor believe incredible Things, lest we fall into what we justly condemn in the *Papists*, Cruelty, and vain Credulity: Such Courses cannot be the Result of honest Intentions, but shrewdly to be suspected rather a Disguise, in pursuing one Villainy to commit another.

For my own Part, without any other Meaning or Reservation whatsoever, I freely and heartily declare, I will never be a *Papist*, nor a Rebel; but will, to my Power, suppress *Popery* as an open Enemy, and Faction as a secret one.

No Act of Oblivion ought to make us to forget by what Ways our late Troubles began, when the Apprentices and Porters mutinied for Justice, in their own Sense. And though I am morally certain, that no such Effect will follow as did then, yet the like Insolence ought not to be suffered for the Example past, and to come.

The City of *London*, I mean the Lord Mayor and Aldermen, and generally all Men of Value and Worth there, I think in my Conscience, are at this Day as loyal and religiously disposed to defend the King and the Government, and maintain the true *Protestant* Religion to their utmost, as any former Age whatsoever can shew; and I know the King thinks so too, and is therefore really and heartily as kind to them.

And therefore, though our Jealousies may be many, our Fears need not be so: For whosoever they are that design Disturbances, and publick

* To be read after Sir *George Wakeman*'s (*Tom Tickle-foot*'s Observations), *Marshal*'s, and *Rumley*'s Trials, in Vol. II.

Dissen-

Diſſentions, for private Ends, will find they are rather troubleſome than dangerous; and the greateſt Miſchief they will be able to effect, will be upon themſelves.

In ſhort, it is the proper Buſineſs of this Court, and our Duty, that ſit Judges here, to take care to prevent and puniſh the Miſchiefs of the Preſs.

For if Men can, with any Safety, write and print whatever they pleaſe, the *Papiſts* will be ſure to put in for their Share too: So that what between them, and the Factious, and the Mercenaries that write for him that hires, and for what they are hired, we ſhall be infected with the *French* Diſeaſe in Government, and be over-run with Lyes and Libels; which agrees neither with *Engliſhmen's* Honeſty, nor Courage, who were wont to ſcorn to ſay what they durſt not own.

Mr. Juſtice JONES.

WE have a particular Caſe here before us, in a Matter of Scandal againſt a great Judge, the greateſt Judge in the Kingdom, in Criminal Cauſes; and it is a great and an high Charge upon him. And certainly there was never any Age, I think, more licentious than this, in aſperſing Governors, ſcattering of Libels and ſcandalous Speeches againſt thoſe that are in Authority; and, without all doubt, it doth become this Court to ſhew their Zeal in ſuppreſſing it.

I am old enough to remember (and, perhaps, feel the Smart of it yet) the Beginning of the late Rebellion (for a Rebellion it was, and deſerves no other Name). I know it had the Fore-runner of ſuch Libels, and Scandals againſt the Government, as this is; and it followed almoſt to the Subverſion of the Happineſs of the Kingdom. As for the Trial hinted at in this Affidavit, I was not preſent at it myſelf, I was detained by my uſual Infirmity, ſo that I could not attend that Service; nor indeed have I read the Relation of it in Print, ſo conſiderately as to give a Judgment upon it: But I am very confident, (upon my Knowledg of the Integrity of my Lord, and the reſt of my Lords the Judges that were there, for there were all the Chief Judges, and almoſt all my Brothers) that that Trial was managed with exact Juſtice, and perfect Integrity, by them.

And therefore I do think it very fit, that this Perſon be proceeded againſt by an Information, that he may be made a public Example to all ſuch as ſhall preſume to ſcandalize the Government, and the Governors, with any falſe Aſperſions or Accuſations.

Mr. Juſtice DOLBEN.

I Am of that Mind, truly; and am very glad we have lit upon one of the Divulgers of theſe Scandals. I was preſent at that Trial, and, for my Part, I think the Scandal to my Lord Chief Juſtice was a Scandal to us all that were there; for if he had miſbehaved himſelf in ſuch a Manner as ſome have reported, we had been ſtrange People to ſit ſtill and ſay nothing, or not interpoſe to rectify wherein he did amiſs: And therefore I deſire this Man may be proceeded againſt, for an Example to others.

May 29, 1680, this *Richard Radley* was convicted of ſpeaking ſcandalous Words againſt the Lord Chief Juſtice *Scroggs*, and fined 200*l.*

NUMBER XX.

Mr. THWING *being condemned at the Summer Aſſizes at* York*, *and after three Months Reprieve, was at laſt,* viz. October 23 *next enſuing, Hanged, Drawn, and Quartered, at the uſual Place of Execution there: Arriving at the Gallows, he delivered in Writing this following Speech.*

THIS ſudden News of my Execution (after my Reprieve) coming ſo unexpectedly, made me fear I ſhould have more Severity ſhewed me than has been to others; and, conſequently, that I ſhould not have my full Liberty to declare my Mind in the Place of my Execution; therefore I have briefly expreſſed myſelf in Writing, as followeth:

Firſt, As I hope for Salvation and Benefit of the Blood and Paſſion of my Bleſſed Saviour, I moſt ſincerely proteſt, that what *Rob. Bairon*, and *L. Mowbray* ſwore againſt me, was abſolutely falſe; for here, in the Preſence of the Eternal God, I declare I never knew of any Conſult at *Barnbow*, the leaſt prejudicial to the King or Kingdom; nor was I ever at any ſuch Conſult, or Meeting, with Sir *Thomas Gaſcoigne*, Mr. *Gaſcoigne* his Son, Sir *Miles Stapleton*, the Lady *Tempeſt*, Mr. *Ingleby*, or any other, where any thing was treated, ſpoken, or written, about killing the King, or Alteration of the Government; nor did I ever ſee, or know of any Liſt of Names of Perſons mentioned, and ſworn by them againſt me.

Secondly, Upon my Salvation I declare, that I never had been in my whole Life-time guilty, even ſo much as in Thought, of any Treaſon againſt his Majeſty, or the Kingdom; being directly contrary to the Principles of our Faith.

Thirdly, That although I have, and do declare againſt the Oath of Allegiance, as it is worded, yet it is only by reaſon of ſome Clauſes therein contained, not pertaining to Allegiance; and therefore if an Oath, containing nothing but Allegiance, had been legally tendered me, I ſhould have thought it a Sin to refuſe it.

Laſtly, I acknowledge myſelf a Prieſt, and to have (about Fifteen Years) performed the Prieſtly Function; which I am ſo far from denying, that I thought it the greateſt Honour imaginable.

Now, dear Countrymen, having made this Proteſtation in the moſt plain and ſerious Terms I could, without all Equivocation, or mental Reſervation whatſoever; I appeal to the Eternal Judge, whether all good Chriſtians ought not rather to believe what is here in this manner ſworn by me, in my preſent Circumſtances, than what was ſworn by my Accuſers, whom, notwithſtanding, I beg of God Almighty to forgive; as alſo the Jury, and all others, who have, in any kind, concurred to my Death.

Then again profeſſing his Innocence, and praying for his King and Country, he concluded with theſe ſeeming Prophetick Words:

Though I know the Affairs of the Kingdom are in a bad Poſture, yet I hope they will be cleared ere long; and then the Actors thereof will be more fully known.

NUMBER XXI.

The Examination of Captain WILLIAM BEDLOW, *deceaſed, relating to the Popiſh Plot; taken in his laſt Sickneſs, by Sir* Francis North, *Chief Juſtice of the Court of* Common-Pleas. *Together with the Narrative of Sir* Francis North, *at the Council-Board: And the Letter of Sir* Francis North, *to Mr. Secretary* Jenkins, *relating to this Examination. Peruſed and ſigned to be printed, according to the Order of the Houſe of Commons, by me* William Williams, *Speaker*†.

The Examination of Capt. William Bedlow, *taken upon Oath before the Lord Chief Juſtice* North, *at* Briſtol, *on* Monday *the* 16*th of* Auguſt, 1680.

THE Examinant ſaith, That the Duke of *York* hath been ſo far engaged in the Plot, as he hath ſeen by Letters in Cardinal *Barbarini's* Secretary's Study, that no Part that hath been proved againſt any Man already, that hath ſuffered, but that to the full thoſe Letters have made him guilty of it; all but what tended to the King's Death. And at *Rome* I aſked Father *Anderton*, and Father *Lodge*, two Jeſuits, What would the Duke do with his Brother when he was King? And they anſwered me, They would find a Means for that; they would give him no Trouble about it. Then I told them, I believed the Duke loved his Brother ſo well, he would ſuffer no Violence to be done to him: They ſaid, No; if the Duke could be brought to that, as he had been religiouſly to every thing elſe, they might do their Work; their other Buſineſs was ready; and they might do it preſently. But they knew they could not bring him to that Point, but they would take care for that themſelves. They had not begun with him, to leave him in ſuch Scruples as that, but they would ſet him into his Throne, and there he ſhould reign blind-fold three or four Days; for they had ſettled ſome they ſhould pitch the Action upon, ſhould clear their Party, and then ſhould fly upon them with the Sword of Revenge.

And this Examinant doth further add, That the Queen is not, to this Examinant's Knowledge, nor by any thing that he could ever find out, any way concerned in the Murder of the King, but barely by her Letters conſenting and promiſing to contribute what Money ſhe could to the introducing the Catholick Religion. Nay, 'twas a great while, and it made her weep, before ſhe could be brought to that.

William Bedlow.

Jurat. 16 *die* Aug. 1680,
coram me,
Fra. North.

The NARRATIVE of Sir Francis North, *Lord Chief Juſtice of the* Common-Pleas, *at the Council-Board.*

AT my firſt coming to Mr. *Rumſey's* Houſe, where I was to lodge at *Briſtol*, upon *Monday* the 16th Day of *Auguſt* in the Afternoon, being the firſt Day of the Aſſizes, Sir *John Knight* came to me, and ſaid, That Mr. *Bedlow* lay dangerouſly ill of a Fever, and had little Hopes of

* This to be read after his Sentence in Vol. III. Pag. 89.

† *Bedlow* having been ſo remarkable a Witneſs in the ſeveral Trials of the Popiſh Plot, it is thought proper to inſert here what he declared upon Oath to the Lord Chief Juſtice *North*, four Days before his Death, (which happened *Auguſt* 20, 1680,) which ſhould be read after thoſe Trials, in Vol. II.

Life;

Life; and desired that I would give him a Visit, that he might impart something of great Consequence to me before his Death. I told him, I would give him a Visit that Night after Supper, about Nine o'Clock, if I might be satisfied of two Things: First, That there was no Infection in his Distemper: Secondly, That the Time would not be inconvenient, but he might discourse to me without Prejudice to his Condition. After a little while, two Physicians came to me, and assured me, that there was no Danger of Infection, and that the Time I had appointed would be most proper; for commonly he took his Repose in the Afternoon, and at Nine o'Clock he would, in all Probability, be refreshed, and fit to discourse with me. Thereupon, I declared my Resolution of going, and desired the Company of the two Sheriffs, and my Brother, *Roger North*, and appointed my Marshal, *William Janes*, to go with me. As we were upon the Way, Mr. *Crossman*, a Minister in that City, told me, Mr. *Bedlow* had desired him to come with me to him: I said, It was very well, and I should be glad of his Company. Whereupon we went all together; and being come into the Room where Mr. *Bedlow* lay, I saluted him, and said, I was extreme sorry to find him so ill; I came to visit him upon his own Desires: I did imagine he had something to impart to me, as a Privy-Councillor, and therefore if he thought fit, the Company might withdraw. He told me, that needed not yet, for he had much to say, which was proper for the Company to hear: And having saluted the Sheriffs, and Mr. *Crossman*, he discoursed to this Purpose.

That he looked upon himself as a dying Man, and found within himself that he could not last long, but must shortly appear before the Lord of Hosts, to give an Account of all his Actions. And because many Persons had made it their Business to baffle and deride the Plot, he did, for the Satisfaction of the World, there declare upon the Faith of a dying Man, and as he hoped for Salvation, That whatever he had testified concerning the Plot, was true; and that he had wronged no Man by his Testimony, but had testified rather under than over what was Truth; that he had nothing lay upon his Conscience upon that Account; that he should appear chearfully before the Lord of Hosts, which he did verily believe he must do in a short Time. He said, He had many Witnesses to produce, who would make the Plot as clear as the Sun; and he had other Things to discover, which were of great Importance to the King, and the Country. Hereupon, he making some Pause, I told him, The Plot was so evidently made out, that no reasonable Man, no *Protestant*, I was sure, could doubt of the Truth of it: But he ought not to have concealed any thing that concerned the King so highly; he ought to discover his whole Knowledge in Matters of Treason, that Traitors may be apprehended and secured, who otherwise may have Opportunity to execute their treasonable Designs. To this he replied, That much of that which he had not discovered, was to corroborate his former Testimony; that he had concealed nothing that was absolutely necessary to the King's Preservation; that he thought it not fit to accuse more Persons, till he had ended with those whom he had already accused. He expressed great Grief and Trouble at the Condition of his poor King and Country, (so he termed them) whom he knew at that Time to be in imminent Danger from the Jesuits, who had resolved the King's Death; and he was sure they would spare him no longer than he continued to be kind to them. He said, He was privy to their Consultations at *Salamanca* and *Valladolid*, where they used to observe the favourable Conjuncture they had to introduce their Religion into *England*; which consisted in their having a Head, who must be set up, whatever came of it; and, if they let slip that Opportunity, they should never have such another; for without a Head they could do nothing. He said further, He knew the Wickedness and Resolution of the Jesuits; they stuck at nothing to compass their own Ends: They had attempted to poison him, but he had escaped.

When he had finished this Discourse, (which lasted about a Quarter of an Hour) I asked him, If the Company should now withdraw? And he said, Yes; and ordered his Nurses to go out, and only his Wife to stay to tend him: And thereupon, all went out, saving Mrs. *Bedlow*, myself, and my Servant *William Janes*. Then I told him, I thought it convenient that what he should then say unto me, should be upon Oath: He replied, That it was necessary it should be so; and called for a Bible; but my Servant having brought a Book with him, administered the Oath to him; and laying his Paper upon a Chair by the Bedside, writ down his Deposition as he delivered it.

When Mr. *Bedlow* had concluded, and said, That was all he had to inform me of, I took the Paper, and read it over distinctly to him, and he approved it, and signed it, laying the Paper upon a Pillow.

I thought it not fit, considering his Condition, to perplex him with Questions, but took his Information as he offered it, and held no Discourse with him when the Company was withdrawn, but concerning the true setting down his Depositions; and when he seemed to be weary, to mind him of taking Cordials, which his Wife reached to him as he desired them.

The next Day, Mr. *Bedlow*'s Brother came to me, and told me, that his Brother desired a Copy of the Deposition he made before me: But I told him I had well considered it, and could not give him a Copy without the King's Leave; but I would move the King in it, and if he gave Leave, I would take Care to send one to him: And Mr. *Bedlow*'s Brother then told me, That it was his Brother's Desire that I should represent to His Majesty his Condition, and that his Sickness was very chargeable; and move His Majesty on his Behalf for some Supply of Money for his Subsistence; which I promised to do.

This is all that I can recollect of what passed upon this Occasion, and is in Substance true; but the very Words, or the Order, I cannot positively remember.

FRA. NORTH.

To the Right Honourable Sir Lyonell Jenkins, *one of his Majesty's Principal Secretaries of State.*

SIR,

"I Always intended to write from hence, to pay my Thanks for the whole Circuit, which was much more pleasant, by your Favour of holding Correspondence with me. But now I have Business of some Importance: For as soon as I came to this City, I received a Message from Mr. *Bedlow*, by Sir *John Knight*, that he being very ill, and, in the Judgment of Physicians, in great Danger of Death, had some Business of great Moment to impart to me. I knowing the Man, and the Season, would not refuse the Pains to give him a Visit; and being satisfied by Physicians that there was no contagious Quality in his Distemper (though I did not much fear it), I went well accompanied; and in the Presence of the Company he declared, That whatever he had said relating to the Plot was true; and he being a dying Man, had nothing lay upon his Conscience upon that Score. The greatest Trouble he had was the Danger the King (whom he loved above all Things) was in from the *Papists* at this Time, who would attempt his Life as soon as ever he should cease to be kind to them; and many other Expressions of this kind. After this, I asked, if he had any Thing to impart to me in private: He told me, he had. And having made the Company withdraw, all but my Clerk, I took the enclosed Examination upon Oath. You may imagine I was not curious to perplex him with Questions: I took it just as he delivered it. Of what Signification it will be, I leave to wiser Men. I think my Duty is to send it to you, that you may inform His Majesty of the Truth. I shall wait upon you at *Windsor*, upon *Sunday* next, to receive your further Commands.

"*Your most humble and*

"*faithful Servant,*

"FRA. NORTH."

Ten at Night. The Copy enclosed is hastily and ill taken. I shall bring the Original with me.

NUMBER XXII.

The humble PETITION of the Lord Mayor, Aldermen, and Commons of the City of London, *in Common-Council assembled, as it was presented to his Majesty in Council at* Windsor, *upon* Monday *the* 18*th of* June, 1683. *Together with the Lord-Keeper* (North's) *Speech* (*a.*)

[Published by His Majesty's Special Command.]

To the KING's Most Excellent MAJESTY:

The humble PETITION of the Lord Mayor, Aldermen, and Commons of the City of *London*, in Common-Council assembled:

Sheweth,

THAT Your Petitioners are heartily and most unfeignedly sorry for the Misgovernment of this your City, of late Years, whereby the Citizens have fallen under your Majesty's Displeasure; which occasioned a Quo Warranto *to be brought against them; upon which Judgment hath been pronounced for the Seizure of their Liberties and Franchises into your Majesty's Hands.*

That your Petitioners are deeply sensible of, and thankfully acknowledge the great Favour of this Opportunity of Application to your Royal Grace, vouchsafed them by Means of your Majesty's not requiring Judgment to be immediately entered thereupon.

And now, considering this our distressed Condition, we humbly cast ourselves at your Royal Feet; imploring your princely Compassion and Grace to be extended to this your ancient City; most humbly begging your Majesty's Pardon for all our Offences.

And we do, in the Name of ourselves, and all the Citizens, humbly tender, and pray your Majesty to accept the most solemn Promises and Assurances of constant Loyalty and Obedience to your Majesty, your Heirs and Successors, and of our regular and dutiful Administration of your Government of this City, for the future: Wherein we submit ourselves to your Majesty's good Pleasure; and humbly beg your Majesty's Commands and Directions, which we will with all Humility and Thankfulness obey.

And your Petitioners shall ever pray.

After the reading of which Petition, the Lord Mayor, Aldermen, and Citizens were commanded to withdraw; and being again called in, the Lord-Keeper spake to them, as followeth:

(*a*) This Petition, Speech, &c. though so material, is omitted in the Proceedings on the *Quo Warranto*; and should be read before the Entry of the Judgment, in Vol. IV. Pag. 851.

My Lord Mayor,

I AM, by the King's Command, to tell you, That he hath conſider'd the humble Petition of the City of *London*, where ſo many of the preſent Magiſtrates, and other eminent Citizens, are of undoubted Loyalty and Affection to his Service; that, for their ſakes, His Majeſty will ſhew the City all the Favour they can reaſonably deſire.

It was very long before his Majeſty took Reſolutions to queſtion their Charter: It was not the ſeditious Diſcourſes of the Coffee-Houſes; the treaſonable Pamphlets and Libels daily publiſhed, and diſperſed thence into all Parts of the Kingdom; the outragious Tumults in the Streets; nor the Affronts to his Courts of Juſtice, could provoke him to it.

His Majeſty had Patience until Diſorders were grown to that Height, that nothing leſs ſeem'd to be deſign'd, than a Ruin to the Government, both of Church and State; for the factious Party were not content with the Practice of theſe Inſolencies, but endeavour'd to have them publickly countenanced by the Magiſtrates: And for that End, in all Elections they ſtickled to chuſe the moſt diſaffected into Offices of the greateſt Truſt in the Government; and carried themſelves with that Heat and Violence, that it was a Terror to all ſober and diſcreet Citizens: And the City was ſo unhappily divided into Parties, that there was no Likelihood it could return to good Order, ſo long as the Factious retain'd any Hopes of procuring the Election of Magiſtrates of their own Party for their Impunity.

It was high Time to put a Stop to this growing Evil. This made it neceſſary for his Majeſty to enquire into their Abuſe of Franchiſes, that it might be in his Power to make a Regulation, ſufficient to reſtore the City to its former good Government.

It was not for Puniſhment, but merely for the Good of the City, that he took this Courſe.

And now the King hath obtained Judgment in a *Quo Warranto*, it is not his Intention to prejudice them, either in their Properties, or Cuſtoms. Nay, leſt the entering a Judgment upon Record might have Conſequences fatal to them, his Majeſty was ſo tender of them, that he cauſed *Mr. Attorney* to forbear the ſame at preſent, that the City might have ſome Time to conſider their own Condition.

My Lord,

I muſt needs ſay, the City hath not been well adviſed, to defer their Application to his Majeſty thus long, even till the Court hath pronounced Judgment: It had been done with a much better Grace, if it had been more early.

His Majeſty's Affection to the City is too great to reject their Suit for that Cauſe.

But for that Reaſon you will have the leſs Time to deliberate upon the Particulars the King doth require of you.

And indeed there will be little need of Deliberation; for his Majeſty hath reſolved to make the Alterations as few and as eaſy as may be, conſiſtent with the good Government of the City, and Peace of the Kingdom. They are theſe:

His Majeſty requires your Submiſſion to theſe Regulations:

That no Lord Mayor, Sheriff, Recorder, Common Serjeant, Town-Clerk, or Coroner of the City of *London*, or Steward of the Borough of *Southwark* ſhall be capable of, or be admitted to the Exerciſe of their reſpective Offices, before his Majeſty ſhall have approved them under his Sign Manual.

That if his Majeſty ſhall diſapprove the Choice of any Perſon to be Lord Mayor, and ſignify the ſame under his Sign Manual, to the Lord Mayor, or, in Default of a Lord Mayor, to the Recorder, or Senior-Alderman, the Citizens ſhall, within one Week, proceed to a new Choice. And if his Majeſty ſhall, in like Manner, diſapprove the ſecond Choice, His Majeſty may, if he ſo pleaſe, nominate a Perſon to be Lord Mayor for the enſuing Year.

If his Majeſty ſhall in like Manner diſapprove the Perſons choſen to be Sheriffs, or either of them, his Majeſty may appoint Perſons to be Sheriffs for the enſuing Year, by his Commiſſion, if he ſo pleaſe.

Nevertheleſs, the Elections of theſe Officers may be according to the antient Uſage of the City, with theſe Reſtrictions.

The Lord Mayor, and Court of Aldermen, may, with Leave of his Majeſty, diſplace any Alderman, Recorder, Common Serjeant, Town-Clerk, Coroner of the ſaid City, and Steward of the ſaid Borough.

Upon the Election of any Alderman, if any of the Perſons that ſhall be preſented to the Court of Aldermen by the Ward ſhall be judged unfit, upon ſuch Declaration by the ſaid Court, the Ward ſhall proceed to the Choice of other Perſons in the Room of ſuch, or ſo many of them as are ſo diſapproved: And if the ſaid Court ſhall diſapprove ſuch ſecond Choice, they may appoint any others in their Room.

The Juſtices of the Peace to be by the King's Commiſſion, which his Majeſty will grant according to the uſual Method; unleſs upon extraordinary Occaſions, when his Majeſty ſhall think it neceſſary for his Service.

Theſe Matters are to be ſettled in ſuch a Manner as ſhall be approved by his Majſty's Attorney and Sollicitor General, and Counſel learned in the Law.

My Lord Mayor,

Theſe Regulations being made, his Majeſty will not only pardon this Proſecution, but confirm your Charter in ſuch Manner as may be conſiſtent with them.

The City ought to look upon this as a great Condeſcenſion on his Majeſty's Part; it being in the Nature of a Reſervation of a ſmall Part of what is already in his Power, by the Judgment: And of thoſe Things which will conduce as much to their own Good and Quiet, as to his Service.

If the City ſhould look upon it with another Eye, and neglect a ſpeedy Compliance; yet his Majeſty hath done his Part, and demonſtrated his Affection to the City, by giving them this Opportunity.

And if there ſhall be any heavy Conſequence of this Judgment, which it will behove you well to conſider, the Fault will lie at their Doors, in whoſe Power it now is, to bring this Affair to a happy Concluſion.

My Lord Mayor,

The Term draws towards an End, and *Midſummer-Day* is at Hand, when ſome of the Officers uſe to be choſen, whereof his Majeſty will reſerve the Approbation; therefore it is his Majeſty's Pleaſure, that you return to the City, and conſult the Common-Council, that he may ſpeedily know your Reſolutions thereupon, and accordingly give his Directions.

That you may ſee the King is in earneſt, and the Matter is not capable of Delay, I am commanded to let you know, he hath given Order to his Attorney-General to enter up Judgment on *Saturday* next, unleſs you prevent it by your Compliance in all theſe Particulars.

But the City not complying, Judgment was enter'd. Vide Vol. IV. Pag. 851, 852.

NUMBER XXIII.

An ANTIDOTE *againſt Poiſon: Compoſed of ſome Remarks upon the Paper printed by the Direction of the Lady* Ruſſel, *and mentioned to have been delivered by the Lord* Ruſſel *to the Sheriffs at the Place of his Execution (a).*

[*By Sir* Bartholomew Shower.]

THE publiſhing of this Paper, as the laſt Speech of a dying Man, cannot but ſurprize all Perſons who were preſent at the Trial of the Lord *Ruſſel*, to read ſuch Reflections upon the Judges, the King's Counſel, the Sheriffs, and the Jury; the Fact ſo untruly repreſented, and the Offender's Innocence ſo ſtrongly aſſerted, when they can all atteſt to the Fairneſs of his Trial, the reſpectful treating of him by the King's Counſel, as far as was conſiſtent with their Duty, without any Strains upon the Evidence, to the favourable Demeanor of the Court towards him, not in the leaſt aggravating the Crime beyond the Evidence, and to the Fulneſs of the Evidence upon the Proofs produced: And therefore thoſe who heard the Evidence muſt acknowledge, that that Paper is ſo far from containing the whole Truth of the Lord *Ruſſel*'s Caſe, that what of Fact is therein inſerted, is wholly diſguiſed, and untruly, and unfaithfully ſet down. Neither doth the Lord *Ruſſel*, in his Speech to the Sheriffs, aver all contain'd in that Paper to be true, nor the Paper to contain the whole Truth of his Caſe; only ſaith, he had ſet down in that Paper all that he thought fit to leave behind him. No doubt, he might as well have ſaid, All that his faithful Confeſſor adviſed him to leave behind him.

For whoſoever ſtrictly peruſeth the Paper, will not find the Ingenuity, Sincerity, or plain Style of a dying Gentleman, but may diſcover the peculiar Dialect of an Artiſt, accuſtom'd to ſhadow Truth with doubtful and ambiguous Expreſſions; and the Paper artificially contrived and deſign'd to gratify a Party by a colourable aſſerting the Innocency of the Criminal, condemn'd by the Law for High-Treaſon, and laying a malicious Imputation upon the Government, for an unjuſt Proſecution of an innocent Perſon to Death.

Whether the Paper doth truly ſtate the Crime, upon the Fact proved, for which the Lord *Ruſſel* was condemn'd; and whether it contain any plain Denial of that Fact; will beſt appear by truly ſtating the Crime charg'd upon him by the Indictment, and the Fact proved upon him at his Trial.

The Lord *Ruſſel*, with others, are charg'd by the Indictment with High-Treaſon, for conſpiring, compaſſing, and imagining the Death and Deſtruction of the King, and raiſing of a Rebellion within the Kingdom.

And the Overt-Acts wherewith they are charged, are their meeting together, conſulting and agreeing to raiſe an Inſurrection and Rebellion, and to ſeize upon the King's Guards.

At the Trial, Colonel *Rumſey* did ſwear, That there was a general Riſing intended in *October* and *November* laſt, and that he was engaged therein: and that the Earl of *Shaftsbury*, who was likewiſe engaged therein, in *November* laſt, acquainted him, that the Duke of *Monmouth*, the Lord *Gray*, Lord *Ruſſel*, Sir *Thomas Armſtrong*, and Mr. *Ferguſon*, were to meet at Mr. *Shepherd*'s Houſe in *Abchurch-Lane*, and ſent him thither with a Meſſage to them; that accordingly he went thither, and found the Lord *Ruſſel*, and the reſt there, and delivered to them the Meſſage

(a) To be read after Lord *Ruſſel*'s Speech, Vol. III. Pag. 668, 669, and 670. It is obſervable, That in the *State-Trials*, Vol. III. Pag. 673. is inſerted *Sir* Robert Atkins's *Defence of the late Lord* Ruſſel's *Innocency: By way of Anſwer or Confutation of a Libellous Pamphlet, entituled*, An Antidote Againſt Poiſon. But the *Antidote* itſelf (willfully I ſuppoſe) omitted.

from the Earl of *Shaftsbury*; which was, That it was high Time to come to ſome Reſolution about the Riſing: That Anſwer was returned, That Mr. *Trenchard* had aſſured them, That, in four Hours Time, one Thouſand Foot, and two or three Hundred Horſe ſhould be ready at *Taunton*. But now Mr. *Trenchard* required two or three Days Notice of the Riſing, and therefore they could not go on at preſent; and that my Lord *Shaftsbury* muſt be contented.

He ſaid, The Anſwer was pronounced by Mr. *Ferguſon*, and the Lord *Gray* ſpoke to the ſame Purpoſe: And being interrogated, whether the Lord *Ruſſel* were ſo near as to hear the Meſſage; he ſaid he was ſo near, and could not but hear it. And being aſked by the Lord *Ruſſel*, whether he conſented to the Anſwer, he declared upon his Oath, that the Lord *Ruſſel* did conſent; and that they then treated and conſulted of the General Riſing: And both Colonel *Rumſey* and Mr. *Shepherd* did ſwear, That the Lord *Ruſſel* and the reſt did conſult at Mr. *Shepherd*'s about ſeizing of the King's Guards. And having at a former Meeting appointed ſome of their Number, *viz.* the Duke of *Monmouth*, Lord *Gray*, and Sir *Thomas Armſtrong*, to view in what Poſture the Guards were, they made Report to the reſt there; That they found them very remiſs in their Duties, and might be eaſily ſeized. Mr. *Shepherd* ſwore, That their Meeting at his Houſe was not caſual, but appointed by themſelves; and that they came late in the Evening; and that my Lord *Ruſſel* mentioned not any private Buſineſs to him; neither had he then any private Buſineſs with the Lord *Ruſſel*. But the Lord *Ruſſel* pretending he came to taſte ſome Sherry, which he had beſpoke of Mr. *Shepherd*, Mr. *Shepherd* denied upon his Oath, that the Lord *Ruſſel* had beſpoke any Sherry of him, or mentioned any ſuch Thing then to him.

The Lord *Howard* gave in Evidence upon his Oath, That there was a Deſign of a General Riſing, both in *October* and *November* laſt; and that the Earl of *Shaftsbury* then acquainted him, he had Ten Thouſand briſk Boys ready. And after the Departure of the Earl of *Shaftsbury*, it was thought neceſſary, for the preventing of Confuſion, and more orderly managing of the Riſing, that a ſelect Council ſhould be held for that Purpoſe: And accordingly, the Duke of *Monmouth*, the Earl of *Eſſex*, the Lord *Ruſſel*, Colonel *Sidney*, Mr. *Hambden*, Junior, and himſelf, met in *January* laſt, at Mr. *Hambden*'s Houſe in *Ruſſel-Street*, and debated certain Preliminaries to the Riſing. Amongſt others, Whether the Riſing ſhould be in *London* firſt, or in the Country firſt, or in both at once? And the major Opinion inclined to have the Riſing both in *London* and the Country at one Time. That ſoon after, They held a ſecond Meeting at the Lord *Ruſſel*'s Houſe, where all the laſt mentioned Perſons were preſent; and where they again debated of the Riſing, and then came to this Reſolution, That ſome Perſon ſhould be ſent into *Scotland*, to invite ſome Perſons thence, from the diſcontented *Scots*, to treat with them, that they might be aſſured of what Aſſiſtance they might expect from the *Scots*: That that Matter was committed by them to the ſpecial Care and Conduct of Colonel *Sidney*: And that Col. *Sidney* acquainted him, he had ſent *Aaron Smith* into *Scotland* accordingly; and that he had given him threeſcore Guineas to defray the Charges of his Journey.

The Lord *Howard*, interrogated by the Lord *Ruſſel*, Whether he ſaid any thing in thoſe Debates, declared upon his Oath, That though his Lordſhip never uſed to ſpeak much, yet he did ſpeak in thoſe Debates, and conſented to what was done.

This was the Subſtance of the Evidence, though delivered by the Witneſſes more at large, as will appear by their Depoſitions, printed with the Trial. A clearer Evidence to prove the Facts charged, of meeting and conſulting to raiſe a Rebellion within the Kingdom, and to ſeize the King's Guards, I believe the moſt experienced Perſon in the Laws can never ſhew was ever produced at the Trial of any Traitor. To the greateſt and ſtrongeſt Part of the Evidence, which is that of the Lord *Howard*, and ſo much of Colonel *Rumſey*'s, which relates to the General Riſing, of which the Witneſſes make full Proof, the Paper gives no Anſwer at all. With what Confidence then can the Author of that Paper introduce a dying Man, aſſerting his own Innocence, and charging the Jury with Forwardneſs and Injuſtice, when the Criminal cannot deny the Facts upon which the Jury gave their Verdict? But theſe Facts, whether true or falſe, the Criminal would not examine. And if he could not, or would not aſſert them to be falſe, no Man of any common Ingenuity can doubt them to be true, when ſworn by credible Witneſſes, and found by a ſubſtantial Jury. Yet, to ſatisfy the Conſcience of a dying Man, and to cover the Scandal of ſo great a Crime from vulgar or partial Eyes, theſe Conſultations and Conſpiracies to raiſe a Rebellion, and foment a General Riſing, are repreſented to the People only as ſome Diſcourſes about ſome Stirs. They may be in *Scotland* ſome Stirs, but in *England* they are, and ever were, ſtiled Rebellion.

As to the other Branch of the Overt-Acts, of conſulting to ſeize the Guards, which the Paper makes the only Crime for which the Lord *Ruſſel* was condemned; this Account is given by the Paper, That the Lord *Ruſſel* was at Mr. *Shepherd*'s Houſe with that Company but once, and there was no Undertaking then of ſecuring and ſeizing the Guards, nor none appointed to view or examine them: Some Diſcourſe there was of the Feaſibleneſs of it, and ſeveral Times by Accident in general Diſcourſe elſewhere.

This Account which the Lord *Ruſſel* gives of this Matter is rather a Confirmation of the Teſtimonies of Colonel *Rumſey* and Mr. *Shepherd*, than an Avoidance thereof: He admits the Feaſibleneſs thereof was then diſcourſed of, and at other Times likewiſe. They ſwore, That the Perſons appointed to view the Guards, reported then, they found them to be very remiſs in their Duties, and might be eaſily ſeized. The Lord *Ruſſel* remembers he was at Mr. *Shepherd*'s Houſe but once; *Shepherd* ſwore he was there with that Company twice, and at the laſt Time the Report was made after viewing of the Guards.

The ſeizing of the Guards was not the only nor principal Fact upon which the Lord *Ruſſel* was condemned, as appears by the Proof ſtated; but it was one of the Inſtances to make out againſt him the general Deſign of raiſing a Rebellion, as one of the propereſt Ways to ſecure the General Riſing, and was ſufficiently proved by two Witneſſes to have been conſulted upon to that Purpoſe.

Indeed, to what other Purpoſe can any Man imagine the Lord *Ruſſel*, and his Accomplices, who appeared to have been engaged in a Deſign of a general Inſurrection, upon ſuch Proof as the Criminal could not deny the Fact, ſhould ſo often diſcourſe of the Feaſibleneſs of ſecuring the Guards, as is confeſſed by the Lord *Ruſſel*, than in order to facilitate and ſecure their Deſign of the General Riſing? And the Diſcourſe the Paper owns to have been at the Lord *Shaftsbury*'s, touching the ſame Matter, who throughout appears to be a principal Agent in the Deſign of the General Riſing, proves the ſeizing of the Guards to be Part of the Deſign. And though the Lord *Ruſſel* then expreſſed a Tenderneſs of ſhedding cold Blood, as a Thing deteſtable, and ſo like a Popiſh Practice; yet that Deluge of Blood which muſt neceſſarily have enſued in the Heats of a General Riſing, which is evident he purſued to his laſt, did not at all affect him, becauſe this might become any heroick Chriſtian drawn in Armour by the Pencil of the Author of *Julian*; and is not unlike to the Practices of the ancient Chriſtians, ſo ſhamefully diſguiſed by the ſame Author.

If then the Facts whereof the Lord *Ruſſel* was found Guilty by the Jury, upon ſuch pregnant Proof, be ſo evident, how is it poſſible for a dying Man, before God and Men, to aſſert his Innocency with ſuch Aſſurance, and ſo frequently repeated in his Speech to the Sheriff, though ſhort, yet twice repeated? '1. God knows how far I was always from 'Deſigns againſt the King's Perſon, or of altering the Government. 2. I 'profeſs I know of no Plot, either againſt the King's Life, or the Go'vernment.'

In the Paper delivered, it is thus expreſſed: 'Whatever Apprehen'ſions I had of Popery, and of my own ſevere and heavy Share I was like 'to have under it, when it ſhould prevail, I never had a Thought of do'ing any Thing againſt it, baſely or inhumanly, but what could conſiſt 'with the Chriſtian Religion, and the Laws and Liberties of this King'dom.' Again; 'I have always loved my Country much more than my 'Life, and never had any Deſign of changing the Government; and 'would have ſuffered any Extremity, rather than have conſented to any 'Deſign to take away the King's Life.' In another Place, he thanks God his Part was ſincere, and well meant, and affirms his Crime to be but Miſpriſion of Treaſon at moſt; and infers, ſo 'I die innocent of the 'Crime I ſtand condemned for:' Alſo he ſaith, 'I know I was guilty 'of no Treaſon.' In the laſt Place, he concludes; 'As I never had any 'Deſign againſt the King's Life, or the Life of any Man whatſoever, ſo 'I never was in any Contrivance of altering the Government.'

Half an Eye may ſee theſe Strokes are all drawn by the ſame Hand, with all imaginable Skill, to quiet the Conſcience of a dying Criminal; and at the ſame Time, by caſting a Miſt before the Eyes of the unthinking Multitude, to poſſeſs them with the Innocence of the condemned Perſon, and the Cruelty of the Government towards him. Let it be conſidered with what careful Reſtrictions and Limitations his Innocency is uſhered in: That he knew of no Plot or Deſign againſt the Perſon of the King, or to kill the King, or to alter or change the Government: That he never had a Thought of doing any Thing baſely or inhumanly, but what could conſiſt with the Chriſtian Religion, and the Laws and Liberties of this Kingdom: That his Crime was but Miſpriſion of Treaſon at moſt, and ſo he is innocent of the Crime he ſtands condemned for. What need of all theſe Cautions, Reſtrictions, and evaſive Circumlocutions, to a plain Man, at the Hour of his Death, to expreſs his Innocency by? If it had been real, a few plain Words would have done it better; *viz.* That he was not engaged in, nor knew of, any Deſign of making an Inſurrection or Rebellion within the Kingdom. He heard the Proof made, and knew that was the Crime laid to his Charge, which is High-Treaſon, both at Common Law, and within the firſt Branch of 25 *E.* III. But that was too clear a Matter for a dying Man plainly to deny; his Conſcience muſt have controuled him.

And to let every Man underſtand the Subtilty of that Paper in Declaration of the Lord *Ruſſel*'s Innocence, with ſuch Reſtrictions, it is neceſſary to be known, that there were two Parts in this horrid Deſign; one was a General Riſing, managed by a ſelect Council, wherein the Conſpirators, according to their different Principles, had their different Ends; ſome were for a Commonwealth, though the fewer in Number; others were for continuing the Monarchy and Government, but with Excluſion of his Royal Highneſs. Of this latter Sort were the Duke of *Monmouth*, and the Lord *Ruſſel*, who plainly ſets down in the Paper the Duke of *Monmouth*'s Opinion of him, That they were both of a Temper. And the Lord *Ruſſel* gives his Opinion of himſelf, That *his Earneſtneſs in the Matter of the Bill of Excluſion had no ſmall Influence in his preſent Sufferings:* Though ſpoken by him with great Reflection upon the Government, yet it truly ſeems to have been the natural Cauſe of thoſe Extravagancies he was led into; his Zeal in that Matter tranſporting him to ſeek that by Force, which the King had before denied in a Courſe of Parliament.

The other Part of the Plot was downright aſſaſſinating of the King and the Duke of *York*; this was managed by a Council of Ruffians, who, according to their Principles, judged this the moſt expeditious and ſafeſt Way to ſecure the General Riſing, and render it more effectual. This was made out beyond all peradventure by many Witneſſes at the Trials of Captain *Walcot* and *Hone*; the latter whereof, beſides the Proofs againſt him, confeſſed himſelf to be one of the Number who had engaged themſelves to kill the King. For this latter horrid Fact of killing and aſſaſſinating, the Lord *Ruſſel* was not accuſed thereof, nor any Proof offered to make it out:

And therefore his frequent Profeſſions of his Innocency, as to any Plot or Deſign upon the King's Life, or to kill the King, or his knowing any thing thereof, and of his Abhorrence thereof, as an inhuman, baſe, vile, and barbarous Act, (which Epithets the Paper gives to that foul Fact) are no plain Declarations of his Innocence as to the Crime charged and proved upon him, of conſpiring and conſulting to raiſe an Inſurrection within the Kingdom.

And 'tis evident, by the Lord *Ruſſel*'s reſtraining the Expreſſion of his Innocency to the Deſign upon the King's Life, and to killing of the King, and omitting to mention the General Riſing, which was fully proved upon him, that the Lord *Ruſſel* intended only that Crime for which *Hone* and *Walcot* were condemned, of aſſaſſinating the King.

The other Reſtriction of his Innocency, as to any Deſign for Alteration, or Change of the Government, which he eſteemed the beſt in the World,

World, which amounts to no more than that he had no Design himself, nor knew of any, to throw off Monarchy, and to introduce a Commonwealth; which was never charged upon him, and may easily be presumed to be such a Government as was no ways agreeable to his Height of Spirit.

But this is no Denial of his being engaged in any Design to make an Insurrection; though his End in such Insurrection were far short of killing of the King, or changing the Monarchy.

Let it be supposed to be only to over-awe the King, that a Parliament might sit to pass the Bill of Exclusion, and other Bills, for the Security of the Protestant Religion, or other specious Pretence whatsoever; which is the best Construction can be put upon the Lord *Russel*'s Case.

That he had a Part in the Insurrection, is evidently proved, and not denied by him: But he saith his Part was sincere and well-meant. What that sincere Meaning was he doth not plainly tell us, which becomes a dying Man to do; but leaves us to conjecture, from the other Parts of the same Paper, what his sincere Purposes were. His Zeal for the Bill of Exclusion, and Detestation of Popery, which accompanied him to his Death, argue his sincere Intention in the Rising to be something that was for the promoting of the Bill of Exclusion, and the utter Extirpation of Popery. Yet he professeth, that notwithstanding all his Zeal against Popery, he never had a Thought of doing any thing against it basely or inhumanly, but what would well consist with the Christian Religion, and the Laws and Liberties of this Kingdom.

This again renders the Matter difficult, to guess at his sincere Meaning in the Design. But the Compiler of the Speech hath so ordered the Composition of the Sentences, by the discretive Particle *But*, that Room is left for the dying Person to intend nothing to be inconsistent with the Christian Religion, and the Laws and Liberties of this Kingdom, but what was base and inhuman, as the Assassination of the King and Duke is judged to be; and that an Insurrection only to compel the King to pass such Bills as his Protestant Subjects conceived necessary for the Preservation of their Religion, was no base and inhuman thing; and therefore not inconsistent with the Christian Religion, but for the Support of it; nor with the Laws and Liberties of the Kingdom, which allow, in the Opinion of too many, both more ancient and modern Fomentors of Rebellion against Princes, a Liberty in the People to acquire that which they apprehend to be their Right, and for their Preservation, by Force, which they cannot obtain from their Princes by fair Means, upon the Account of a Supreme Law for Preservation of themselves, and their Religion, inherent to all Governments.

To this Purpose was prepared and published that venomous Book of *Julian*, so much hugged and applauded by the Conspirators, as a fit Plaister composed of ancient, Christian Practices, for such Consciences who might entertain the least Scruple against infamous libelling of their Prince, or using any Force or Coercion upon the Government. To the same Purpose have been printed, and reprinted of late, divers seditious Books and Pamphlets; and another was preparing for the Press, by one of the Conspirators, *To assert a Supremacy in the People, to determine for themselves, against their Prince.*

The Northern Climate hath of late furnished us both with Doctrines and Examples of the same Batch. The Compiler of the Speech was, without question, acquainted, if not infected, with those Doctrines, Tenets, and Examples; and therefore may be presumed to lie under that great Delusion, That it was lawful for Subjects to procure from their Princes by Force, whatever they judged necessary for the Preservation of their Civil or Religious Rights, so in the doing thereof their Parts were sincere and well meant:

When nothing is clearer by the Laws of this Kingdom, than that to raise a Rebellion, or make an Insurrection, be the Design or Intent thereof never so speciously good, is High-Treason. And it is apparent that the Lord *Russel*, or the Author of that Paper, was misguided in two principal and plain Points of Law:

First, That Meeting and Consulting to make an Insurrection, and in order thereunto to seize upon the King's Guards, which the Paper calls Stirs, is not Treason within the Statute of *Edward* III.

Secondly, That the Lord *Russel*'s being present at the several Consults for managing the Insurrection, and his Part therein, amounted only to Misprision of Treason; and so concludes himself innocent of the Crime he stood condemned for, which was High-Treason, for compassing the Death and Destruction of the King, by conspiring to raise a Rebellion within the Kingdom.

These Mistakes of the plainest Points in Law are the only Supports of the Lord *Russel*'s Innocency; whereby he comforted himself at his Death, and may mislead others into the same Ruin.

To prevent which, it is conceived seasonable upon this Occasion, to state clearly what the Law of the Land is upon those Points, to the common Understanding of every Subject.

As to the first Point, The Meeting and Consulting to make an Insurrection against the King, or raise a Rebellion within the Kingdom, be the End thereof never so specious for Publick Good, though the Rebellion be not actually raised, is High-Treason by the Laws of this Land. It was so at Common Law, by the Consent of all the Books of Law that treat of that Matter, and no one Authority against it. It is so since the Statute 25 *Edward* III. *cap.* 2. within the first Branch of that Law against Compassing and Imagining the Death of the King. The Death of the King in that Law is not restrain'd to killing of his natural Person, but extends as well to civil Death as Natural. To conspire to depose the King is equally High-Treason with that of killing the King: So for imprisoning of the King, or seizing or taking of him into the Power of his Subjects, or for laying any Force or Restraint upon him, until he do what his Subjects would have him. These are all High-Treason, for compassing his Death, either natural or civil; and all Overt-Acts, which declare the Intent of effecting any of these Crimes, as all Meetings, Consultations, and Agreements to rise in Rebellion, and to seize upon the King's Guards, which are his Defence against Force, and invite the Aid and Assistance of the King's Subjects of any other of his Kingdoms, plainly are Overt-Acts of compassing the King's Death; and so have been adjudged in all Times, whenever such Case came into Judgment.

In 2 & 3 *Phil. & M.* one *Constable* dispersed divers Bills in the Night about the Streets, in which was written, *That King* Edward VI. *was alive, and in* France; and at another time, in *Coleman-Street*, pointed to a young Man, and said, *He was King* Edward VI.

These things tending only to depose the Queen, were adjudged High-Treason, for compassing her Death; and *Constable* was thereupon indicted, attainted, and executed. The Case is cited in *Calvin*'s Case, *Co.* 7 *Rep. fol.* 106. 13 *Eliz. Dyer*, 298. Dr. *Story* practised with the Governor of *Flanders*, to invade the Realm with Force; and declared by what Means, and in what Manner and Place the Invasion might be: No Invasion following, it was referred to all the Judges, to consider what Crime it was, who resolved it to be High-Treason; because an Invasion with Power could not be, but of necessity it must tend to the Destruction, or great Peril of the Queen.

Jac. I. The Lord *Cobham* conspired with Sir *Walter Raleigh*, and other the King's Subjects, to make an Insurrection within the Realm, in order to set up the Lady *Arabella Stuart* to be Queen: And to this Purpose treated with the Ambassador of the Arch-Duke of *Austria*, for procuring Money from the King of *Spain*, and persuaded the Lady *Arabella* to write Letters to the King of *Spain*, for his Assistance with Forces, and Letters sent accordingly. Though the Insurrection did not follow, but a Discovery made before it was put in Execution, the Lord *Cobham*, and others of the Conspirators, were indicted of High-Treason, for Compassing the King's Death, and the several Meetings and Consultations for making the Insurrection, and procuring the Invasion, laid in the Indictment. The Lord *Cobham* was tried by his Peers, attainted, and executed. The Lord *Hale*, in his Pleas of the Crown, 13, takes notice only of the Overt-Act of writing the Letters to a foreign Prince, inciting an Invasion, which he allows to be a sufficient Overt-Act of that Treason which was laid in the Indictment, for compassing the Death of the King.

In the same Year of *Jac.* I. the Lord *Gray*, and other Conspirators, met and consulted to make an Insurrection, whereby they designed to seize the King into their Power, until he should grant them a Pardon for all Treasons, a Toleration of the Exercise of the Popish Religion, and the Removal of twelve of the Privy-Council; and should make the Lord *Gray* Master of his Horse, and several others of the Conspirators, Lord Treasurer, Lord Privy Seal, and other great Officers.

They were indicted for compassing the King's Death, and raising a Rebellion within the Kindom, and no other Overt-Acts laid in the Indictment, but several Meetings, Consultations, and Agreements between the Confederates, to raise a Rebellion for the Purposes aforesaid.

The Lord *Gray* was tried by his Peers, and had Judgment to be hanged, drawn, and quartered.

In Sir *Henry Vane*'s Case, Meeting and Consulting about Treason were held sufficient Overt-Acts.

In *Plunket*'s Case lately in the *King's-Bench*, the Indictment was for High-Treason, in compassing the Death of the King; the Overt-Acts alledged against him were, Consulting to raise an Insurrection in *Ireland*, and bringing of the *French* into *Ireland*, and collecting Money in *Ireland*, and holding Correspondencies in *France* for that Purpose. There was no Proof of any Design upon the King's natural Person, which was in *England*; yet he was attainted and executed for High-Treason, though no Insurrection or Invasion followed: So that there can be no Question at this time of Day, but that Meeting and Consulting to raise a Rebellion, though it be not an actual levying of War within another Branch of the Statute of 25 *Edw.* III. yet they are Overt-Acts of compassing the King's Death, within the first Branch of that Statute.

The other gross Mistake is, That the Lord *Russel*'s Crime was only Misprision of High-Treason.

Misprision of High-Treason is the Concealment thereof by a Person who had a bare Knowledge of the Treason, without any Mixture of his Consent. But if the Person be present at the Debates and Consultations, though he say nothing, if he do not immediately reveal, but continues to meet, and be present at their Debates, he is a principal Traitor. Where a Person was not present at the Debates and Resolves, but is afterwards acquainted with them, and gives his Consent thereto, it is High-Treason, and not a Misprision barely.

This was the Case of *George Brooke*, to whom the Lord *Cobham* related the whole Conspiracy of setting up the Lady *Arabella*; who consented to the same, and was indicted and attainted as a principal Traitor in that Conspiracy. Now the Lord *Russel*, as he puts his own Case, of being present at several Meetings where seizing of the Guards were treated of, and horrid things spoken, argues himself guilty of High-Treason, though he make a false Conclusion from those Premisses, that 'twas but Misprision. But the Witnesses proving his frequent Meetings and Consults, and the last of them at his own House, and his express Consent to the Matters debated and agreed upon, do put it beyond a Question to any Man that desires not to be wilfully deceived, that the Crime of the Lord *Russel* was not a bare Misprision of Treason, but High-Treason in the highest degree; being to raise a Rebellion against the King, the Consequence whereof in all Probability would have been the Destruction of the King, and Subversion of the Government, if not the Desolation of the whole Kingdom.

If, after this plain Account of the Lord *Russel*'s Case, any Persons be so hardy to think the Compiler of that Paper of greater Skill in the Laws of the Land than the Reverend and Learned Judges, who have judged his Crime to be High-Treason; the utmost Comfort he can expect for his being deceived is, That he shall have the like comfortable Speech prepared for him upon the like Occasion.

NUMBER XXIV.

To the KING's Moſt Excellent MAJESTY,

The Humble Petition of ALGERNOON SIDNEY, *Eſq.* *

Sheweth,

THAT your Petitioner, after a long and cloſe Impriſonment, was, on the ſeventh Day of this Month (*November*) brought by a Guard of Soldiers to the Palace-Yard, upon a *Habeas Corpus*, directed to the Lieutenant of the *Tower*, before any Indictment had been exhibited againſt him.

That whilſt he was there detained, a Bill was exhibited and found againſt him; whereupon he was immediately carried to the *King's-Bench*, and there arraigned. In this Surprize he deſired a Copy of the Indictment, and Leave to make his Exceptions, or to put in a Special Plea, and Counſel to frame it; but all was denied: He then offered a Special Plea ready engroſſed; which was then alſo rejected, without reading: Being threatened, That if he did not immediately plead Guilty or Not Guilty, Judgment of High-Treaſon ſhould be entered; he was forced, contrary to Law (as he ſuppoſeth), to come to a General Iſſue, in pleading Not Guilty.

November the twenty-firſt he was brought to his Trial; and the Indictment being perplexed and confuſed, ſo that neither he nor any of his Friends that heard it could fully comprehend the Scope of it, he was utterly unprovided of all the Helps that the Law alloweth unto every Man for his Defence: Whereupon he again deſired a Copy, and produced an authentick Copy of the Statute *Edw.* III. whereby it is enacted, *That every Man ſhall have a Copy of any Record that toucheth him in any Manner, as well that which is for, as againſt the King, or any other Perſon*; but could have neither a Copy of his Indictment, nor that the Statute ſhould be read.

The Jury by which he was to be tried was not (as he is informed) ſummoned by the Bailiffs of the ſeveral Hundreds, in the uſual and legal Manner; but Names were agreed upon by Mr. *Graham*, Mr. *Burton*, and the Under-Sheriff, and Directions given to the Bailiffs to ſummon them; and being all ſo choſen, the Copy of the Pannel was of no Uſe to him.

When they came to be called, he excepted againſt ſome for being your Majeſty's Servants; which he did hope ſhould not have been returned, when he was proſecuted at your Majeſty's Suit.

Many others, for not being Freeholders (which Exceptions he thinks are good in Law), and others more lewd and infamous Perſons, not fit to be of any Jury; but all was over-ruled by the Lord Chief-Juſtice, and your Petitioner forced to challenge them peremptorily, whom he found to be picked out as moſt ſuitable to the Intentions of thoſe who ſought his Ruin; whereby he loſt the Benefit allowed him by the Law, of making his Exceptions, and was forced to admit of mechanick Perſons, utterly unable to judge of ſuch a Matter as was to be brought before them.

This Jury being ſworn, no Witneſs was produced who fixed any thing beyond Hearſay upon your Petitioner, except the Lord *Howard*, and thoſe that ſwore to ſome Papers ſaid to be found in his Houſe, and offered as a ſecond Witneſs, and which were written in a Hand like unto your Petitioner's.

Your Petitioner produced ten Witneſſes, moſt of them Men of eminent Quality, the others of unblemiſhed Fame, to ſhew the Lord *Howard*'s Teſtimony was inconſiſtent with what he had (in the Preſence of God) affirmed to many of them, (and as he ſwore at the Trial of the Lord *Ruſſel*) under the ſame religious Obligation of an Oath as if it had been legally adminiſtered.

Your Petitioner did endeavour further to ſhew, that beſides the Abſurdity and Incongruity of his Teſtimony, he being guilty of many Crimes which he did not pretend your Petitioner had any Knowledge of; and having no other Hope of a Pardon, but by the Drudgery of ſwearing againſt him, he deſerved not to be believed: And that Similitude of Hands could not be Evidence, was delivered by the Lord Chief-Juſtice *Keeling*, and the whole Court, in the Lady *Carr*'s Caſe; ſo as no Evidence at Law remained againſt him.

That whoſoever wrote thoſe Papers, they were but a ſmall Part of a polemical Diſcourſe, in Anſwer to a Book written about thirty Years ago, upon general Propoſitions, applied to no Time, nor any particular Caſe; that it was impoſſible to judge of any Part of it, unleſs the Whole did appear, which did not; that the Senſe of ſuch Parts of it as were produced could not be comprehended, unleſs the Whole had been read, which was denied; that the Ink and Paper ſhewed it to be written many Years ago, and the Lord *Howard* knowing nothing of them, they could have no Concurrence with what your Petitioner was ſaid to have deſigned, with him and others.

That the Confuſions and Errors in writing it, ſhew the ſame had never been ſo much as reviewed; and being written in a Hand that no Man could well read, neither fit for the Preſs, nor could be in ſome Years, though the Writer of it did intend it, which did not appear.

That they being only the preſent crude and private Thoughts of a Man, for the Exerciſe of his own Underſtanding in his Study, never ſhewed to any, nor applied to any particular Caſe, could not fall under the Statute 25 *Edw.* III. which takes Cognizance of no ſuch Matters, and could not by Conſtruction be brought under it, ſuch Matters being thereby reſerved to the Parliament, as is declared in the Proviſo, which he deſired might be read, but was refuſed.

Eight or nine important Points of Law did hereupon ariſe; upon which your Petitioner, knowing his Weakneſs, did deſire his Counſel might be heard, or reſerved to be found ſpecially; but all was over-ruled by the Violence of the Lord Chief-Juſtice, and your Petitioner ſo frequently interrupted, that the whole Method of his Defence was broken, and he not ſuffered to ſay the tenth Part of what he could have alledged in his own Defence; ſo the Jury was hurried into a Verdict which they did not underſtand.

Now foraſmuch as no Man that is oppreſſed in England *can have any Relief, unleſs it be from your Majeſty*;

Your Petitioner humbly prays, That, the Premiſſes conſidered, your Majeſty would be pleaſed to admit him into your Preſence; and if he doth not ſhew that it is for your Majeſty's Honour and Intereſt to preſerve him from the ſaid Oppreſſion, he will not complain, though he be left to be deſtroyed.

NUMBER XXV.

A Copy of the Paper delivered to the Lord-Keeper NORTH, *the Lord Chief-Juſtice* JEFFREYS, *and* Mr. Attorney-General, *by the Lady* ARMSTRONG, *on the Behalf of her Huſband Sir* THOMAS ARMSTRONG †.

My Lord,

I AM informed, That by the Common Law of *England*, any Man that was outlawed in Felony, or Treaſon, might bring a Writ of Error to reverſe his Outlawry; which was to be granted *ex Debito Juſticiæ*: Though it may be, the Manner of ſuing for ſuch a Writ of Error to the King might be by way of Petition (as in a Petition or *Remonſtrance de Droit* for Lands, *&c.*): And ſo it was reſolved in *Ninian Melvin*'s Caſe, *Co.* 4 *Inſt.* 215.

Next, by the Common Law, If any Man were in *England* at the Time of the Exigent awarded, and went out of the Realm after that, and before the Outlawry pronounced, he could never aſſign that for Error, That he was beyond Sea at the Time of the Pronouncing of the Outlawry; and the Reaſon is, becauſe he was here at the Time of the awarding of the Exigent, and might reaſonably have Notice of it.

On the other ſide, If any were out of *England* during the whole Proceſs and Pronunciation of the Outlawry, it was never yet a Doubt but that was an Error, and might be aſſigned for Error, either by the Party or his Heir, at the Common Law, and ſo continues to this Day; and was, not long ſince, adjudged in *O'Kerney*'s Caſe the *Iriſhman*, who came in about two Years after the Outlawry.

Then comes the Statute of 5 & 6 *Edw.* VI. *cap.* 11. and enlarges the Law for the Benefit of the outlawed Perſon, and gives him Liberty to aſſign for Error, That he was beyond Sea at the Time of the Outlawry pronounced; which he could not do by Common Law, before the Statute; and ſo continues.

Then comes the Proviſo, and ſays, That he muſt come in within a Year, and render himſelf, to be entitled to the Benefit of that Act; which was to aſſign for Error, That he was beyond Sea at the Time of the Outlawry pronounced.

So that, my Lord, upon this ſhort State of the Law, and my Huſband's Caſe, he being beyond Sea all the Time of the Proceſs, and at the Time of the Outlawry pronounced, it is conceived he is well entitled to aſſign this for Error, at the Common Law, without any Aid of the Statute, though the Proviſo in that Statute ſhould be ruled againſt him; which (with Submiſſion) is the Opinion of many learned Perſons in the Law, That he is within the Intent and Meaning of that Proviſo, for many Reaſons too long to trouble your Lordſhip with now.

Therefore I do hope that this Caſe of my Huſband's, being the firſt Caſe that any Man was executed upon an Outlawry (that did not deſire it ‡) may have that Weight with your Lordſhip that it deſerves: And do hope that your Lordſhip will ſo adviſe the King in Matter of Law (whoſe Counſel you are), that my Huſband may have a Writ of Error granted him, and Counſel aſſigned him to argue theſe Points, as by the Law has been allowed to Criminals in Capital Caſes, with whatſoever elſe ſhall appear upon the Record of Outlawry produced, which as yet my Huſband, or any for him, never ſaw.

* This Petition, though ſo material, is omitted in Col. *Sidney*'s Trial; and ſhould be read before his Speech at Execution, in Vol. III. Pag. 738.

† This ſhould be read after his Trial in Vol. III. Pag. 897.

‡ *Holloway*, a little before, being in the ſame Condition, refuſed a Trial; and ſo was executed upon the Outlawry.

A Copy of the Paper delivered by Sir THOMAS ARMSTRONG *to the Sheriff**.

I Thank Almighty God, though I have had but a ſhort Time allowed me, I find myſelf prepared for Death, and my Thoughts ſet on another World; and I truſt in God's Mercy, I am well weaned from ſetting my Heart on this: Yet I cannot but give ſo much of my little Time, to ſet down in Writing my Anſwers to ſome Calumnies raiſed ſince my cloſe Impriſonment, as well as what *Mr. Attorney* accuſed me of at the Bar. I was told, a very great Perſon ſaid I was a Spy of *Cromwell*'s. I was ſent from *England* by the beſt and conſiderableſt Friends the King had then, with Bills of Exchange, and Letters of very great Importance to his Majeſty at *Bruſſels*; I appeal to his Majeſty if I delivered them not ſafe, and his Anſwer to them, when I returned: Which I had not been above Six Days but I was clapped up a cloſe Priſoner in the *Gatehouſe*, and in extreme Danger of my Life for that Journey. Before this, I had been a Year in *Lambeth-Houſe* a Priſoner; and after a Priſoner in the *Tower*, when the Uſurper died, and near ſtarving in every one of them: Very ill Treatments for a Spy and a Penſioner! My Lord of *Oxford*, and many others of Quality, will, I think, teſtify my Innocence in this Point. I proteſt before God, I was never a Spy or Penſioner to *Cromwell*, or any other Man. On *Saturday* laſt I was brought down to the *King's-Bench* Bar, on an Outlawry of High Treaſon: I was aſked what I had to ſay for myſelf, that Judgment of Death ſhould not paſs? I anſwered, That I was beyond Sea when the Outlawry came out; I thought the Law allowed a Writ of Error to reverſe it; I prayed I might be allowed a Trial for my Life, according to the Laws of the Land; I urged the Statute of *Edw.* VI. which was expreſs for it: but it ſignified nothing; I was condemned, and made a Precedent; though Mr. *Holloway* a little before had it offered him. I cannot but think all the World will conclude my Caſe very different: And why was it refuſed me? *Mr. Attorney* accuſed me there for being one of thoſe that were to kill the King as ſoon as he came back from *Newmarket* after the Fire. I take God to Witneſs, I never was in any Deſign to take away the King's Life; neither had any Man the Impudence to propoſe ſo baſe and barbarous a Thing to me; neither was I ever in any Deſign to alter the Government of *England*. What I am accuſed of, I know no otherwiſe than by Reports, and Prints; which I take to be uncertain. So that it cannot be expected I ſhould make particular Anſwers to them. If I had been tried, I could have proved my Lord *Howard*'s baſe Reflections upon me to be a notorious Falſhood; for there were at leaſt ten Gentlemen, beſides all the Servants in the Houſe, can prove I dined there that Day.

I have lived, and now die, of the Reformed Religion, a true and ſincere Proteſtant, and in the Communion of the Church of *England*. I have found the great Comfort of the Love and Mercy of God, in and through my Bleſſed Redeemer, in whom I only truſt; and I do verily hope I am going to partake of that Fulneſs of Joy which I believe is in his Preſence; the Hopes whereof do infinitely pleaſe me. I thank God, I have no Repining at my Heart for the Condition my Sins have moſt deſervedly brought me to; I have deſerved much worſe at the Hands of God: So that I chearfully ſubmit to this Puniſhment, as being taken off but a ſmall Time ſooner. I do freely forgive all the World, even thoſe concerned in taking away my Life. As for the Sentence of Death paſſed upon me, I cannot but think it a very hard one; being denied the Law of the Land, as I think. To conclude; As I never had any Deſign againſt the King's Life, or the Life of any Man; ſo I was never in any Deſign to alter the Government. I die in Charity with all the World; and therefore I heartily pray God to bleſs the Church of Chriſt every where, theſe poor Nations, and the King's Majeſty; and I heartily commend my Soul to God's infinite Mercy, through my Bleſſed Saviour, Jeſus Chriſt.

NUMBER XXVI.

Anno 1° Gul' & Mariæ. N°. IV. — *An Act for annulling and making void the Attainder of* WILLIAM RUSSELL, *Eſq; commonly called Lord* RUSSELL †.

WHEREAS *William Ruſſell*, Eſq; commonly called Lord *Ruſſell*, eldeſt Son of the Right Honourable *William* Earl of *Bedford*, in the Month of *July*, in the five-and-thirtieth Year of the Reign of our late Sovereign Lord King *Charles* the Second, at a Seſſions of Goal Delivery, holden at the *Old Bailey*, *London*, was, by undue and illegal Returne of Jurors, haveing been refuſed his lawfull Challenge to the ſaid Jurors, for want of Freehold, and by partiall and unjuſt Conſtructions of Law, wrongfully convicted, attainted, and executed for High Treaſon: May it therefore pleaſe your moſt excellent Majeſtyes, at the humble Petition of the ſaid Earl of *Bedford*, and the Right Honourable the Lady *Rachell Ruſſell*, Relict of the ſaid Lord *Ruſſell*, That it be declared and enacted by the Authority of this preſent Parliament; and be it enacted by the King and Queen's moſt Excellent Majeſties, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by Authority of the ſame, That the ſaid Conviction, Judgment, and Attainder of the ſaid *William Ruſſell*, commonly called Lord *Ruſſell*, be, and are hereby repealed, reverſed, made and declared null and void, to all Intents, Conſtructions, and Purpoſes whatſoever, as if no ſuch Conviction, Judgment, or Attainder, had ever been had, or made: And that no Corruption of Blood, or other Penalty, or Forfeiture of Honours, Dignities, Lands, Hereditaments, Goods, or Chattels, be by the ſaid Conviction or Attainder incurred; any Law, Uſage, or Cuſtom to the contrary notwithſtanding. And to the End that Right be done to the Memory of the deceaſed Lord *Ruſſell* aforeſaid, Be it further enacted, That all Records and Proceedings relateing to the ſaid Attainder, be wholly cancelled, and taken off the File, or otherwiſe defaced and obliterated, to the Intent the ſame may not be viſible in after Ages: And that at the next Seſſions of Goal Delivery, to be holden for the City of *London*, the ſaid Records and Proceedings ſhall be brought into the Court, and then and there taken off from the File, and cancelled.

William Cowper, Cler. Parliamentor.

(*Exam.*)

NUMBER XXVII.

Anno 1° Gul' & Mariæ. N° XXIV. — *An Act for annulling and making void the Attainder of* ALGERNOON SYDNEY, *Eſq*; ‡

WHEREAS *Algernoon Sydney*, Eſquire, in the Term of St. *Michael*, in the five-and-thirtieth Year of the Reign of our late Sovereign Lord King *Charles* the Second, in the Court of *King's-Bench* at *Weſtminſter*, by Means of an illegal Return of Jurors, and by Denial of his lawful Challenges to divers of them, for want of Freehold, and without ſufficient legal Evidence of any Treaſons committed by him; there being at that Time produced a Paper found in the Cloſet of the ſaid *Algernoon*, ſuppoſed to be his Hand-Writing, which was not proved by the Teſtimony of any one Witneſs, to be written by him; but the Jury was directed to believe it by comparing it with other Writings of the ſaid *Algernoon*; and beſides that Paper ſo produced, there was but one Witneſs to prove any Matter againſt the ſaid *Algernoon*; and by a partial and unjuſt Conſtruction of the Statute, declaring what was his Treaſon, was moſt unjuſtly and wrongfully convicted and attainted, and afterwards executed for High Treaſon: May it therefore pleaſe your moſt excellent Majeſties, at the humble Petition and Requeſt of the Right Honourable *Phillip* Earl of *Leiceſter*, Brother and Heir of the ſaid *Algernoon Sydney*, and of the Right Honourable *Henry* Viſcount *Sydney*, of *Sheppy*, in the County of *Kent*, the other Brother of the ſaid *Algernoon*, That it be declared and enacted, and be it enacted by the King's and Queene's moſt excellent Majeſties, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament aſſembled, and by the Authority of the ſame, That the ſaid Conviction, Judgment, and Attainder of the ſaid *Algernoon Sydney* be, and are repealed, reverſed, made and declared null and void, to all Intents, Conſtructions, and Purpoſes whatſoever, and as if no ſuch Conviction, Judgement, or Attainder had ever been had or given: And that no Corruption of Blood, or other Penalty, or Forfeiture of Honours, Dignities, Goods, Chattels, Lands, Tenements, or Hereditaments, be by the ſaid Conviction and Attainder incurred; any Law, Uſage, or Cuſtom to the contrary notwithſtanding. And to the End that Right be done to the Memory of the ſaid *Algernoon Sidney*, deceaſed, Be it further enacted, That all Records and Proceedings relating to the ſaid Attainder, be wholly cancelled, and taken off the Fyle, or otherwiſe defaced and obliterated; to the Intent that the ſame may not be viſible in after Ages: And that the Records and Proceedings of and to the ſaid Conviction, Judgment, and Attainder, in the ſaid Court of *King's-Bench* now remaining, ſhall, and be forthwith brought into the ſaid Court, this preſent *Eaſter* Term, and then and there taken off from the Fyle and cancelled.

William Cowper, Cler' Parliamentor'.

(*Exam.*)

* From a MS. belonging to the late Mr. *Grainger* of the *India-Houſe*. Sir *Thomas*'s Speech being printed from a very imperfect Copy in the *State Trials*, Vol. III. Pag. 898, it was thought proper to inſert this, being printed from an authentick MS.

† The Reverſal of Lord *Ruſſel*'s Attainder (as alſo that of Col. *Sidney*, and Mr. *Corniſh*) ſhould be read after Lord *Ruſſel*'s Trial, in Vol. III.

‡ This Act, which is referr'd to in *Layer*'s Trial, Vol. VI. Pag. 277, 279, *&c.* ſhould be read after Col. *Sydney*'s Trial, in Vol. III.

NUMBER XXVIII.

At a Parliament begun and holden at Weſtminſter, *the* 22*d of* January, *primo* Gulielmi & Mariæ Regis & Reginæ, 1688. *Numb.* 39.

An Act for reverſing the Attainder of HENRY CORNISH, *Eſq. late Alderman of the City of* London *.

WHEREAS *Henry Corniſh*, Eſq. late Alderman of the City of *London*, was indicted of High-Treaſon, upon Pretence, That knowing *James* late Duke of *Monmouth*, *William Ruſſell*, Eſq. and Sir *Thomas Armſtrong*, to be Traitors, and to have conſpired the Death of the late King *Charles* the Second, promiſed to be aſſiſting to them in ſuch Treaſons, to bring them to Effect; and being thereupon arraigned at the Seſſions-Houſe in the *Old-Baily*, the 19th Day of *October*, *Anno Dom.* 1685, although he was committed for the ſaid pretended Treaſon but the 13th of the ſame *October*, and had Notice of his Trial the 17th of the ſame *October*, and was kept cloſe Priſoner from the Time of his Commitment to the Time of his Trial, and could not poſſibly therefore prepare himſelf for his Defence, neither would the Court, which tried him, give him any longer Time to prepare himſelf for his Trial, although he very much preſſed for longer Time, having a material Witneſs to ſend for, who was not then in Town, and was above 140 Miles off: And having pleaded *Not Guilty* to the Indictment, he was preſently tried and convicted on the ſingle Evidence of Col. *Rumſey*, who ſwore the Priſoner was in the Room, at one Mr. *Sheppard*'s Houſe, in Company of the Duke of *Monmouth*, the Lord *Ruſſell*, the Lord *Grey*, Sir *Thomas Armſtrong*, Mr. *Ferguſon*, Mr. *Sheppard*, and the Witneſs, when a Paper was read, the Contents whereof are a Complaint of the Miſgovernment of King *Charles* the Second, and declaring for Liberty of Conſcience, and that all thoſe who would aſſiſt in that Inſurrection, that had Lands of the Church, or of the King's, in the late Wars, ſhould have them reſtored; to which Paper, as the Witneſs ſwore, the Priſoner expreſſed his Liking: Whereas the ſaid *Rumſey* owned, when he gave his Evidence, that he did not hear all the Paper read, nor did take great Notice of it, and therefore was not a competent Witneſs of the Contents of the Paper. And whereas the ſaid Col. *Rumſey* had, in the Lord *Ruſſell's* Trial, expreſly ſworn that he was not in the Room when the ſaid pretended Paper was read: And whereas Col. *Rumſey*, in the ſame Lord *Ruſſell*'s Trial, expreſly mentions the Names of all the Perſons in the ſaid Room, in the ſaid Mr. *Sheppard*'s Houſe, whereof the ſaid *Henry Corniſh* was none: And whereas Mr. *Sheppard*, whom *Rumſey*, in his Evidence, owned to be in the Room when the ſaid pretended Paper was read, expreſly teſtified, *That the ſaid* Henry Corniſh *was not in the Room at the Time of the reading the ſaid pretended Paper*. For all which Reaſons, at the humble Petition and Requeſt of *Elizabeth Corniſh*, Widow and Relict, and *Henry Corniſh*, eldeſt Son of the ſaid *Henry Corniſh*; Be it enacted by the King and Queen's moſt excellent Majeſties, and by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commmons, in this preſent Parliament aſſembled, and by the Authority of the ſame, That the Conviction and Attainder of the ſaid *Henry Corniſh*, deceaſed, for High-Treaſon, be hereby reverſed, annulled, and made void, to all Intents and Purpoſes whatſoever. And to the End that Right be done to the Memory of the deceaſed *Henry Corniſh* aforeſaid, Be it further enacted, That all Records and Proceedings relating to the ſaid Attainder, be wholly cancelled, and taken off the File, or otherwiſe defaced and obliterated, to the Intent the ſame may not be viſible in After-Ages; and that at the next Seſſions of Gaol-Delivery, to be holden after the Feaſt of St. *Michael* next, for the City of *London*, the ſaid Records and Proceedings ſhall be brought into the Court, and then and there taken off from the File, and cancelled.

Copia Vera,

Jo. Brown, Cleric. Parliament.

NUMBER XXIX.

Soon after the *Revolution*, TITUS OATES delivered the following PETITION;

To the Right Honourable the Lords Spiritual and Temporal, and to the Honourable the Knights, Citizens, and Burgeſſes, in this preſent Parliament aſſembled; The Humble Petition of TITUS OATES, *D. D.* †

Moſt humbly ſheweth,

THAT your Petitioner, in the Year 1678, diſcovered a horrid Popiſh Conſpiracy for the Deſtruction of the late King *Charles* II. his preſent Majeſty, and the Proteſtant Religion within theſe Kingdoms; and proved it ſo fully, that ſeveral Parliaments, and Courts of Juſtice, before whom he gave his Teſtimony, declared their Belief of it by publick Votes, and the Condemnation of ſeveral of the Conſpirators. For which Reaſon, and becauſe your Petitioner would not be terrified by their Threats, nor ſeduced by their Promiſes of great Rewards (with both which Temptations they often aſſaulted him) to deſiſt in his Diſcovery, the Jeſuits and Papiſts purſued him with an implacable Malice, and endeavoured to take away his Fame and Life, by ſuborning Witneſſes to accuſe him of Capital Crimes: But being defeated in that villainous Attempt, they firſt procured King *Charles* II. to withdraw that Protection and Subſiſtence his Majeſty had, at the Requeſt of ſeveral Parliaments, allowed to your Petitioner; and then inſtigated his Royal Highneſs the Duke of *York* to proſecute your Petitioner in an Action of *Scandalum magnatum*, for ſpeaking this notorious Truth, That he, the ſaid Duke of *York*, was reconciled to the Church of *Rome*; and that it is High-Treaſon to be ſo reconciled; wherein a Verdict and Judgment for one hundred thouſand Pounds Damages were obtained againſt your Petitioner; and your Petitioner was committed to the *King's-Bench* Priſon.

After this the ſame Popiſh Party obtained Leave from King *Charles* II. to prefer two ſeveral Indictments againſt your Petitioner, for two pretended Perjuries in his Evidence concerning the ſaid Conſpiracy; which they brought on to Trial in the Reign of King *James* II. And your Petitioner was, upon the Evidence of thoſe very Witneſſes who had confronted him in three former Trials, and were diſbelieved, and through the partial Behaviour of the Chief-Juſtice *Jeffreys*, in brow-beating his Witneſſes, and miſleading the Juries, convicted of the ſaid pretended Perjuries, and received this inhuman and unparalleled Sentence following; *To pay two thouſand Marks to the King; to be diveſted of his Canonical Habit; to be brought into* Weſtminſter-Hall, *with a Paper upon his Head, with this Inſcription*, "Titus Oates *convicted upon full Evidence of two horrid Perju-*" *ries;*" *to ſtand in and upon the Pillory two ſeveral Days for the Space of an Hour; to be whipped by the common Hangman from* Aldgate *to* Newgate *on* Wedneſday, *and to be whipped again on the* Friday *following from* Newgate *to* Tyburn; *to ſtand in and upon the Pillory five Times in every Year of his Life; and to remain a Priſoner during his Life.* Which Sentence being intended, as your Petitioner hath juſt Reaſon to believe, to murder him, was accordingly executed with all the Circumſtances of Barbarity; he having ſuffered ſome thouſands of Stripes, whereby he was put to unſpeakable Tortures, and lay ten Weeks under the Surgeons Hands. Neither did their Cruelty ceaſe here; but becauſe your Petitioner, by God's Mercy miraculouſly ſupporting him (and the extraordinary Skill of a judicious Surgeon) outlived that bloody Uſage, ſome of them afterwards got into your Petitioner's Chamber, whilſt he was weak in his Bed, and attempted to pull off the Plaiſters applied to cure his Back, and threatened to deſtroy him: And that nothing within their Power or Malice might be wanting to complete your Petitioner's Miſery, they procured him to be loaded with Irons of exceſſive Weight for a whole Year, without any Intermiſſion, even when his Legs were ſwollen with the Gout; and to be ſhut up in the Dungeon, or Hole of the Priſon; whereby he became impaired in his Limbs, and contracted Convulſion Fits, and other Diſtempers to the great Hazard of his Life. All which illegal Proceedings, and barbarous Inhumanities, your Petitioner humbly conceives were not only intended as a Revenge upon him, but likewiſe to caſt a Reproach upon the Wiſdom and Honour of four ſucceſſive Parliaments, who had given him Credit, and upon the publick Juſtice of the Nation. And your Petitioner humbly hopes that ſince the

* To be read after Mr. *Corniſh*'s Trial, in Vol. III.

† To be read after *Oates*'s Trials, in Vol. III. and IV.

Papiſts themſelves have verified and confirmed his Evidence, by their late open and avowed Violations of our Religion, Laws and Liberties, this Honourable Houſe will vindicate the Proceedings of former Parliaments, and diſcharge your Petitioner from thoſe arbitrary and ſcandalous Judgments, and the unjuſt Impriſonment he lies under.

Your Petitioner doth therefore moſt humbly beſeech your Lordſhips and your Honours, to take this deplorable Caſe into your generous and tender Conſideration, and to give him ſuch Redreſs therein, as your Lordſhips and your Honours great Wiſdom, Juſtice and Goodneſs ſhall ſeem meet.

And your Petitioner ſhall ever pray, &c.

In the Houſe of Peers, on the Vote for affirming the Judgment againſt TITUS OATES.

Die Sabbati, 25 *Maii*, 1689.

WE diſſent, for theſe Reaſons;

1. For that the *King's-Bench*, being a Temporal Court, made it Part of the Judgment, that *Titus Oates*, being a Clerk, ſhould for his ſaid Perjuries be diveſted of his Canonical and Prieſtly Habit, and ſo continue diveſted all his Life; which is a Matter wholly out of their Power, belonging to the Eccleſiaſtical Courts only.

2. For that the ſaid Judgments are barbarouſly inhuman and unchriſtian; and there is no Precedent to warrant the Puniſhments of Whipping and Committing to Priſon for Life, for the Crime of Perjury; which yet was but one Part of the Puniſhments that were inflicted upon him.

3. For that the particular Matters upon which theſe Indictments were founded, were the Points objected againſt Mr. *Titus Oates* his Teſtimony, in ſeveral of the Trials in which he was allowed to be a good and credible Witneſs, though teſtified againſt him by moſt of the ſame Perſons who witneſſed againſt him upon theſe two Indictments.

4. For that this will be an Encouragement and Allowance for giving the like barbarous, illegal, and cruel Judgments hereafter, unleſs this be reverſed.

5. Becauſe Sir *John Holt*, Sir *Henry Pollexfen*, the two Chief Juſtices, and Sir *Robert Atkins*, Chief Baron, with ſix Judges more (being all that were then preſent) for theſe and many other Reaſons, did before us ſolemnly deliver their Opinions, and unanimouſly declare, That the ſaid Judgments were contrary to Law and ancient Practices; and therefore erroneous, and ought to be reverſed.

6. Becauſe it is contrary to the Declaration of the twelfth of *February* laſt, which was ordered by the Lords Spiritual and Temporal, and Commons then aſſembled, and by their Declaration engroſſed in Parliament, and enrolled among the Records in Parliament, and recorded in Chancery, it does appear, that exceſſive Bails ought not to be required, nor exceſſive Fines impoſed, nor cruel and unuſual Puniſhments inflicted.

Bolton, *Macclesfield*, *J. Bridgwater*, *Bolingbroke*, *Herbert*, *Vaughan*, *Stamford*, *Grey*, *Cornwallis*, *Oxford*, *Bath*, *R. Eure*, *P. Wharton*.

Biſhop *Kennet*, in his *Complete Hiſtory of England*, Vol. III. ſays, "On "*May* the thirty-firſt the Houſe of Lords having heard the Opinion of "all the Judges concerning the Illegality of two Judgments given againſt "*Titus Oates*, upon the Point of Perjury, for which he had brought his "Writs of Error; the Houſe had this main Queſtion propoſed, *Whether "the ſaid two Judgments ſhould be reverſed?* Which being reſolved in the "Negative, and the ſaid Judgments confirmed, thirteen Lords entered "their Diſſents," for the before-mentioned Reaſons. "This Proteſtation *(ſays the Biſhop)* worked ſo powerfully in the Houſe of Lords, "that the following Day their Lordſhips, after hearing Counſel at the "Bar, to argue the Errors aſſigned by *Oates*, did order and adjudge, "That the Judgment given againſt the ſaid *Oates* ſhould be reverſed: "And Leave was given for the bringing in a Bill *for the ſecuring Perſons "hereafter from the Prejudice which might come from his Teſtimony*. A Bill "of Reverſal paſſed the Lower Houſe: And upon a ſecond Reading in "the Upper, there were ſeveral Amendments made, and a Proviſo in"ſerted, whereby it was declared, *That until the Matters for which* Ti"tus Oates *was committed for Perjury, were heard and determined in Par"liament, the ſaid* Oates *ſhould not be received in any Court or Cauſe what"ſoever to be a Witneſs*. Againſt which Proviſo and Amendments a Pro"teſtation was entered, by the Earls of *Oxford*, *Suffolk*, *Monmouth*, "*Mountagu*, *Macclesfield*, *Bedford*, *Stamford*, and *Suſſex*, and the Lords "*Newport*, *Berkley*, *Cornwallis*, *Paget*, and *Herbert*. When the Bill "was ſent back to the Commons, they diſagreed to the Amendments: "Upon which a memorable Conference began between the two Houſes "on *July* the twenty-ninth, which occaſioned great Heats, that might "have riſen into greater Flames, if the Parliament had not been ſud"denly adjourned. And all that *Oates* was able to obtain in this Seſſion "was only, on *June* the ſixth, an Addreſs from the Lords, at the Com"mons Deſire, requeſting his Majeſty, *That whereas* Titus Oates, *Clerk, "had already received a ſevere Puniſhment, for the Perjury whereof he had "been formerly convicted; and ſome of the ſaid Puniſhments would ſtill be con"tinued upon him, unleſs they ſhould be remitted by His Majeſty; His Ma"jeſty would be graciouſly pleaſed to grant His Pardon to the ſaid* Oates. "The King readily complied with the Lords Deſire: And moreover, as "ſoon as, by their Lordſhips Order, *Oates* was diſcharged from his Con"finement, His Majeſty received him into his Protection, and allowed him "a conſiderable Penſion; which occaſioned various Reflexions."

NUMBER XXX.

Informations and Examinations, taken upon Oath before a Committee of the Houſe of Lords, appointed to inſpect who were the Adviſers and Proſecutors of the Murders of the Lord RUSSELL, *Colonel* SIDNEY, *Sir* THOMAS ARMSTRONG, *Mr.* CORNISH, *and others**; *whereof a Report was made by the Right Honourable the Earl of* Stamford, *upon the twentieth Day of* December, 1689.

MR. *John Phelps*, Mr. *Thomas Morris*, Mr. *Peter Hagar*, Mr. *Robert Bates*, Mr. *Richard Haly*, Mr. *Horneby*, and Mr. *Criſpe Grang*, (all Perſons of good Value and unſpotted Reputation) being examined upon Oath, in relation to *Joſiah Keeling*, depoſed in Subſtance as follows, *viz.*

That *Keeling*, three or four Days or a Week before his Diſcovery of the *Presbyterian Plot*, came into their Company at the *Fleece* Tavern in *Cornhill*; where he appearing to be much diſturbed and confuſed, one of their Company enquired of him, Why he ſeemed to be ſo diſordered? To which he anſwered, That he lay under a great Temptation; for he was ſent to by the Lords in the *Tower*; and ſome Gentleman that came to him from them told him, his own Party had diſobliged him, and he had now an Opportunity to be revenged of them; that he could not be inſenſible of ſome Perſons that deſigned againſt the Government; and that if he would diſcover, he might make himſelf and his Family; that he had great Proffers of Money, and a Place of a Hundred Pounds *per Annum*; and might go in a Coach and ſix Horſes to *Windſor:* And that he was to meet thoſe who treated with him again that Night, at the *Bull-Head* Tavern near the *Tower*.

That upon *Keeling*'s talking at this Rate, one of the Company aſked him, why he troubled them with this Diſcourſe; and told him, if he knew any thing againſt the Government, he ought to diſcover it; but if he knew nothing, he would do well to keep out of ſuch Temptations, and not go to the Meeting appointed: But he ſaid he would go, becauſe he had promiſed them in the Morning that he would meet them again; but declared that he knew nothing; and ſaid that he acquainted them with it, becauſe if he ſhould be prevailed upon, by Temptation of Money, to witneſs any thing they ſhould be able to witneſs againſt him, that he had declared that he knew nothing in Agitation againſt the Government; and that they ſhould teſtify, that he was the greateſt Rogue and Villain living, if he ſhould ſwear againſt any Man.

Mr. *Phelps* (in particular) depoſed, That he attended to have teſtified this at my Lord *Ruſſell*'s Trial, but was not aſked to come in at any other of the Trials, and durſt not appear unleſs deſired; that he remembers not whether or no he knew of *Walcot*'s Trial before it was over; but that he knew not that *Keeling* was a Witneſs againſt him till after the Trial was over.

Mr. *Morris* depoſed, That he knew not that *Keeling* was a Diſcoverer of a Plot till after *Walcot*'s Trial; but believes he acquainted Sir *Will. Pulteney* what he heard *Keeling* ſay before the Lord *Ruſſell*'s Trial, and alſo told it to Mr. *Stevens*; whereupon he was ſubpœna'd to that Trial, and went; but the Trial was not till three or four Days after the Time he was directed to attend; that a ſecond Subpœna came the Night before the Trial, but he being from home did not receive it till after the Trial.

Mr. *Hagar* depoſed, That he thinks he knew *Keeling* was a Witneſs againſt Captain *Walcot*, but did not then offer himſelf to be a Witneſs, becauſe Times were ſo difficult; but when he heard of my Lord *Ruſſell*'s Trial, he acquainted his Lordſhip's Servant with what he has now ſworn, and that he attended at the Trial, but *Keeling* was no Witneſs.

Mr. *Bates* depoſed, That he believes he told what he hath now ſworn about *Keeling*'s Declaration at the *Fleece* Tavern to twenty Perſons, before the Lord *Ruſſell*'s Trial; and that he heard *Keeling* ſay, in the *Amſterdam* Coffee-houſe, *It is reported that I have diſcovered a Plot of the Duke of* Monmouth, *my Lord* Ruſſell, *and others; but I know nothing of it, and am innocent, and falſly accuſed.*

Mr. *Haly* depoſed, That he remembers not that he ſpoke of what he has now ſworn to any Perſon; for Times were ſuch, he was afraid to ſpeak of it.

* To be read after their Trials, in Vol. III.

John Keeling depoſed, That *Joſiah Keeling*, his Brother (who gave his firſt Information upon Oath to Sir *Leoline Jenkins*, upon the twelfth of *June*, 1683), came to him the next Day, and called him out, and carried him into the Company of *Goodenough*, at the *Dolphin* Tavern; where they talked of taking off the *Blackbird* and the *Goldſmith* (meaning the *King* and the *Duke*): That the Company being parted, he the ſaid *John Keeling* told his Brother that he did not underſtand that Gibberiſh, and therefore would not be concerned.

That his Brother then carried him to one Mr. *Peckham*, at the *Fleece* Tavern in *Southwark*; where *Peckham* encouraged him, and told him, if he would be a Witneſs, he ſhould be well rewarded: Then he carried him to two Gentlemen (whom he knew not) to the *Flanders* Coffee-houſe; who encouraged him, and would have had him to a Dinner, but he declined it.

That then his Brother told him, he muſt go with him to Secretary *Jenkins*, to give Information of what he had heard; to which he ſhewing Averſion, his Brother told him, he muſt go thither or to *Newgate*; and ſo he was compelled to comply.

That he gave Notice to Mr. *Tory* (his Brother's Maſter) how his Brother had trapanned him, and made him to ſwear; and that he acquainted Mr. *Jones* therewith, and deſired him to give Notice to the Perſons accuſed.

That he did not believe the Plot till he ſaw the Proclamation, and underſtood that *Lee* the Dyer came in for a Witneſs; that his Brother had Five Hundred Pounds of the King, and brought it to a Coffee-houſe.

That he the ſaid *John Keeling* was ſubpœna'd to be a Witneſs againſt the Lord *Ruſſel*, and was ſworn to give Evidence to the Grand Jury; but was not examined.

Mr. *Nathaniel Wade* depoſed, That *Joſiah Keeling* accuſed him of being in the *Rye-houſe* Plot; though he had never been above twice in his Company: That, at the *Salutation* Tavern in *Lombard-Street*, he heard *Keeling* ſpeak very extravagantly, and ſay he would do ſome briſk thing; and that thereupon Mr. *Nelthorpe* ſaid, *I prithee be not mad:* And that preſently after Mr. *Wade* heard his own Name in a Proclamation.

Mr. *John Tiſard* depoſed, That at my Lord *Ruſſel*'s Trial four Gentlemen told him, that *Keeling* (who was to have been the firſt Evidence againſt his Lordſhip) had confeſſed that he was to meet ſome Gentlemen at a Tavern, who were to give him Inſtructions what to ſwear; but he ſaid, when he had received the Inſtructions, he would make a Diſcovery.

That, however, *Keeling* was not produced againſt my Lord; and he believes the Reaſon was, Becauſe ſome were apprized of the Defence which his Lordſhip would have made againſt his Evidence.

Mr. *Nathaniel Gael* depoſed, That by the Perſuaſion of *Keeling*'s Mother, he procured a Hundred Pounds to be lent to him by Mr. *Wolfe*, a Merchant, to ſupply his Neceſſities; which *Keeling* repaid three Months after; which was after he was an Evidence.

Joſiah Keeling being examined, declared, That he remembers not that he was in an Agony or Trouble at the *Fleece* Tavern; or that he told the Company there, he was to meet any Perſons concerning the Diſcovery of a Plot; or that he was promiſed a Groat, or Employment; or that he deſired them to bear Witneſs againſt him, if he pretended to ſay any thing of a Plot; or that he knew nothing.

That he was ſubpœna'd at the Lord *Ruſſel*'s and *Walcot*'s Trials; and was there during the whole Trial of the Lord *Ruſſel*.

That he applied himſelf to the Lord Privy-Seal, at his Houſe, to help him to his Place in the Victualling-Office; and he thinks he applied alſo to the Duke of *York:* That he after reminded the Lord *Hallifax* going up into the Gallery at *Whitehall*; and after that he heard he had his Place, he thanked him that Evening; and he continued in his Place till within theſe ſix Weeks.

That he had Money of the King, as Subſiſtence; and alſo received Five Hundred Pounds of Mr. *Duncumb* the Banker: That the King told him, he ſhould have a Hundred Pounds a-Year; but he never had it.

Mr. *Aaron Smyth* depoſed, That he was a Priſoner in the *Tower* when my Lord *Ruſſel* and Colonel *Sidney* were tried; and was kept cloſe Priſoner above nineteen Weeks, at Five Pounds a Week Charge; and two Warders watched him, or lay in the Room.

That one of his Warders told him, that Sir *Ambroſe Phillips* was come to ſpeak with him; and had an Order from one of the Secretaries to come as often as he would, and bring whom he would along with him; but then he was alone. When Sir *Ambroſe* came in, after ſome other Diſcourſe, he told him it was in his Power to make himſelf what he would; for (ſaid he) you know this Rogue *Sidney* is a Traitor; and you may make yourſelf what you will, if you will diſcover what you know of his Deſigns againſt the Government.

That he replied, He could not ſay any thing that could touch a Hair of Col. *Sidney*'s Head: And that then *Phillips* ſaid, if he might adviſe the King, he would have all the damned *Whig* Rogues hanged; And for your Part, every body knows you are guilty.

Sir *Ambroſe Phillips* being examined, confeſſed, That *Aaron Smyth* had been his Client, and there was a Friendſhip between them; and he thought he might have prevailed with him to have declared what he knew; which he thought would be a Service to the Publick, and Service to himſelf.

That he cannot be poſitive, Whether Mr. *Roger North* gave him an Order to go to *Aaron Smyth*, or told him he ſhould find an Order with the Lieutenant of the *Tower*.

That he uſed to Mr. *Smyth* the Arguments a Friend might do, and told him he came not to trapan him; nor would he diſcover more of what he would tell him, but what he would give him Leave: But he found him very reſolute; and ſo fairly took his Leave, and never came near him more.

That he believes he might ſay to Mr. *North*, that he had ſuch a Power in Mr. *Smyth*, to perſuade him to tell what he knew; that Nobody beſides Mr. *North* either perſuaded or adviſed him to go to Mr. *Smyth*.

Mr. *Roger North* being examined, ſaid, That he procured no Order for Sir *Ambroſe Philips* to go to *Aaron Smyth*; nor doth he believe he ever had any Converſation with him about that Matter; and he is confident he never delivered him any Order for going to him, nor told him that he ſhould find any ſuch Order at the *Tower*; nor, to the beſt of his Remembrance, knew he of any ſuch Order; and that Sir *Ambroſe Phillips* miſremembers, if he ſays he had any ſuch Order from him.

Sir *John Moore* being examined, ſaid, That 'twas not he that rejected the Sheriffs, but the Court of Aldermen; that Mr. *Papillon* was ſet aſide by the Court, becauſe Sir *John* had drank to Sir *Dudly North*.

That he doth not believe or remember, that he had any Orders from Court to drink to Sir *Dudly*; that Secretary *Jenkins* was often to viſit him, but never gave him any Directions.

That he believes Mr. *Papillon* and Mr. *Dubois* demanded the Poll; that he had no Direction from *Whitehall* to reject the Poll, but the Court of Aldermen did reject it.

That the Soldiers were ſent to keep the Peace; that he remembers not that he, either the Day before, or that Morning of the Poll, made any Promiſe not to diſturb the Poll; nor doth he remember what Time of the Day he went to diſturb the Poll: Many of the Citizens came to his Houſe, and would have him to the Hall, telling him, the Poll went on, though he adjourned it; which Adjournment, he ſaith, was by Advice of the Court of Aldermen.

Mr. *Normanſel* and Mr. *Trotman*, the Secondaries, depoſed, That *Graham* and *Burton* were the Proſecutors of my Lord *Ruſſel*; that Sir *Dudly North* had the Books from them, and returned my Lord *Ruſſel*'s Jury; that Juries had uſually been returned by the Secondaries, and taken out of two, three, or four Wards; but this Jury was taken out of about nineteen Wards: That Sir *Benjamin Thorowgood* returned the Jury upon Alderman *Corniſh*.

Mr. *Trotman* added, that *Graham* and *Burton* were alſo the Proſecutors of Alderman *Corniſh*.

Mr. *Perry* (who had been Clerk to Mr. *Trotman* nine Years) depoſed, That he was not by at the Return of my Lord *Ruſſel*'s Jury; but he made a Copy of it, and it was under Sir *Dudly North*'s Hand.

That he was with Mr. *Trotman* at Sir *Benjamin Thorowgood*'s Houſe, who had the Books of both the Compters; and he wrote the Names, as Sir *Benjamin* directed him.

That in common Caſes the Pannels uſed to be returned out of two or three Wards.

Mr. *Criſp*, the Common Serjeant, depoſed, That he hath known Juries returned out of ſix Wards, and never out of fewer than four.

That he was in Court at Part of the Lord *Ruſſel*'s Trial: That he remembers his Lordſhip deſired he might be heard by Counſel, and that they might have Time to conſider of it; but the Court heard them immediately.

Sir. *Dudly North* being examined, ſaid, That he was a Freeman of *London*; and the Lord Mayor drank to him as Sheriff; and he took upon him the Office, and was 2000 *l.* out of Purſe, which he never had again directly or indirectly.

Sir *Dudly* went on, ſaying, That he impannelled the Juries for the Seſſions, when the Lord *Ruſſel* was tried: That he return'd the beſt Jury he could, without obſerving any Ward; and drew this out of ſeveral Wards, becauſe they might be the more ſubſtantial Men.

That to the beſt of his Remembrance, Sir *Peter Rich* concurr'd in this Jury; if he had oppoſed it, he ſhould not have done it.

That the Juries before were return'd by the Secondaries, but this being a very extraordinary Buſineſs, he thought it requiſite to take care of it himſelf.

That he took no care of what Opinion the Jury were of, but only that they were ſubſtantial Men.

That he had no Order or Directions from any Man alive, to take care of this Buſineſs.

Sir *Peter Rich* declared, That he was never aſked in his whole Year to impannel a Jury; and that he never impannel'd any, or ſign'd any Pannel, to his Knowledge; and ſays poſitively, that the Books were ſent to him by the Secondaries, and that he never ſaw the Pannel of my Lord *Ruſſel*'s Jury, till he heard it read in Court.

That the uſual Practice of the Return of Juries in *London*, is by the Secondaries.

Sir *Benjamin Thorowgood*, being examined, ſaid, That he was Sheriff at the Time when Mr. *Corniſh* ſuffer'd: That the two Secondaries brought him the Books: That he knows not out of how many Wards the Jury was return'd; but he thinks out of moſt of them, and he believes it to be the Cuſtom to return the Jury ſo.

That he thought it a Piece of Juſtice in him, to ſee the Jury fairly return'd; being the Gentleman to be try'd had been one of his Predeceſſors.

That the Jury were of the ſufficienteſt, ableſt, and honeſteſt Men of the City of *London:* And he believes, all the Men that ſerved of the Jury, were thoſe he returned.

Mr. *Henry Corniſh*, being examined, depoſed, That his Father was kept cloſe, from his Commitment to the Day of his Trial, and Captain *Richardſon* would admit none of his Friends to come to him.

That he went to *Normanſel*, the Secondary, for a Copy of the Pannel, and either he or his Clerk told him, that *Burton* and *Graham* had it; and when he came again in the Evening to them for it, one of them told him, They had Orders from above not to let him have it.

Sir *James Forbes* depoſed, That the Duke of *Monmouth* deſired him to ſhew Mr. *Hambden* a Paper written with the King's own Hand; which was for the Duke's owning of the Evidence of *Rumſey*, and others.

That he told the Duke, that that Paper would make him infamous, and would be a Means of deſtroying many Men's Lives; whereupon the Duke ſent him with the Paper to the Earl of *Angleſey*, who, upon the reading of it, preſently wrote a Paper of Reaſons againſt it.

That before Sir *James* went to the Earl of *Angleſey*, the Duke told him, if it were ſo as he had told him, he would have the Paper again, tho' he died for it; whereupon, Sir *James* aſk'd him how he would get it; that the Duke ſaid, the King would ſhew it him, and then he would tear it out of his Hand; and then further ſaid, the Duke of *York* was his implacable Enemy.

That as ſoon as Mr. *Hambden* had read the Paper, he ſaid, he was a dead Man; and aſk'd Leave of Sir *James* to ſhew it to his Father, which he conſented to.

That he return'd to the Duke, and gave him the Earl of *Angleſey*'s Reaſons againſt the Paper, together with his own thoughts of it: Whereupon the Duke replied, That he ſaw they had a mind to ruin him, and he was only brought into Court to do a Job; and that he would not ſleep before he had retrieved the Paper.

That the Duke told him how kindly the King had expreſs'd himſelf to him; and Sir *James* deſired the Duke to ſave Colonel *Sidney*, if poſſible, but he fear'd he could not; but ſaid, He had told the King how good a Man the Lord *Ruſſel* was, and how unjuſtly he had been put to Death.

That, at the Deſire of Mr. *Hambden*, the Duke went to viſit him, before he had his Pardon; tho' he thought it to be very dangerous, and was with him two or three Hours in private, and Sir *James* believes it was about ſaving the Colonel's Life.

That the Duke's Servants told Sir *James* at the Cock-Pit, that they were order'd not to ſuffer any of his old Friends, or Whigs, (and ſuch and ſuch in particular) to ſee, or pay a Viſit to the Duke.

That the Duke told Sir *James*, That the Lord *Hallifax* perſuaded him to ſign the Paper; but whether it were for his Good or not, he knew not.

That when Sir *James* told the Duke, how it was reported in the Town, that he was come in to be a Witneſs, he anſwer'd he never would.

That the next Day after Sir *James* had given the Duke the Earl of *Angleſey*'s Reaſons, and Mr. *Hambden*'s and his own Opinion, Colonel *Godfrey* came to him, and told him, That the Duke had recover'd the Paper, and had got it into his own Poſſeſſion; and Sir *James* went to tell Mr. *Hambden*, Mr. *Charlton*, and Major *Wildman* of it.

Colonel *Godfrey* depoſed, That the firſt Night the Duke of *Monmouth* came to Court, he went to him with Sir *James Forbes*; and the Duke told them how kind the King was to him, in giving him his Pardon; and that he believed he owed a great deal of it to the Lord *Hallifax*; and ſeveral Times he heard him ſay, that the Lord *Hallifax* had been kind and ſerviceable to him.

That the Duke ſaid, The King told him, that he muſt ſubmit to be aſk'd Queſtions in publick concerning the Plot; and muſt ſubmit to him, and not contradict him.

That within two or three Days after the Duke ſurrender'd himſelf, he ſhew'd him a Paper, which was a Declaration, or ſeeming Confirmation of the Plot, with which the Lord *Ruſſel* and Colonel *Sidney* were charged; and he thinks the Paper was ſign'd with the Duke's Name to it.

That the Paper which the Duke got from the King was not the ſame with the other; and he believes he did not ſee that Paper: That the Duke told him, after the Paper had been ſent to the Council, that he had ſign'd ſuch a Paper: He underſtood in general from him, that this Paper was a Confirmation of the Plot the Lord *Ruſſel* and Colonel *Sidney* ſuffer'd upon.

That he thinks the Duke told him, the Lord *Hallifax* perſuaded him to ſign that Paper; the Reaſons he uſed were, That he might keep at Court, and be near the King, or elſe he muſt go from thence.

Anthony Row, Eſq. depoſed, That the Duke of *Monmouth* ſent him to the King with two or three Letters, whom he found very angry with him for the Company he kept, and particularly the Lord *Howard*, who, he ſaid, was ſo ill a Man, that he would not hang the worſt Dog he had on his Evidence.

That he heard the Duke had a Paper given him from the King to conſider of; he ſeem'd unwilling to ſign it, but at laſt conſented, ſo he might not be aſk'd to ſign any other; he being in the Bed-Chamber when the King told him he ſhould not: Whether he ſign'd it or not, Mr. *Row* knows not.

That this Paper was given to the King and ſhew'd to the Council; but they not liking it, it was either burnt or torn, and another Paper drawn.

That about that Time, ſomething of this being put into the *Gazette*, Mr. *Row* acquainted the Duke with it, who was diſpleaſed at it; and bid them tell every body they met, that it was falſe.

That Mr. *Row* doing ſo in the Coffee-Houſe that Night, the King was acquainted with it; and ſent for him early the next Morning, and chid him; and told him, he did the Duke more Hurt than he was aware of, and commanded him to ſpeak no more of it.

That the Duke told him, he was reſolved not to ſign the ſecond Paper: That one Day afterwards, he and *Godfrey* and *Barker* were in the outward Room, and the Lord *Hallifax* was with the Duke and Dutcheſs in her Room; and the Duke came out to them once or twice, and at laſt ſaid he had done it; and that Night he ſeem'd angry with himſelf that he had ſign'd the Paper, for that it might hurt others, and that if it had concerned none but himſelf, he had not cared; but ſaid, he would not reſt till he had the Paper again, and the next Morning he told him he had got it.

That the Duke told them, that the King had often preſs'd him to ſign it, and told him he ſhould never ſee his Face more if he did not do it; but if he would, he ſhould aſk him nothing but he would grant it: But when he did ſign it he knows not, nor that there was any in the Room but the Dutcheſs and the Lord *Hallifax*.

That the Duke told him, after he came out, that the Lord *Hallifax* had over-perſuaded him, and made him do it; and engaged to him, the King ſhould never let the Paper be ſeen; and ſaid, This was the Time to gain the King's Favour: It being long ago, Mr. *Row* declared theſe Things, as he believes, and to the beſt of his Remembrance.

Mr. *Robert Yard* being examined, declared, That the Advertiſement concerning the Duke of *Monmouth*, which was put into the *Gazette*, was what was handled in Council the Day after the Duke came in: It was the giving an Account of what paſs'd betwixt the King and the Duke. That he had the Paper either from the Lord *Sunderland*, or Sir *Leoline Jenkins*.

John Hambden, Eſq. declared himſelf thus: His Caſe is ſo twiſted with thoſe of the noble Perſons, whoſe Murders you enquire after, that he knows not how to ſpeak of theirs, without relating his own; and that he looks upon himſelf almoſt as much murder'd as any of them, by reaſon of his Sufferings.

My Lord *Ruſſel*, and Col. *Sidney*, were clapp'd up in the *Tower*; after which he was ſent for, and brought into the Cabinet-Council, or ſelect Number of Lords, and aſk'd, Whether he was of the Council of Six? (ſo the Lord *Howard* was pleaſed to call it:) He ſaw there the King, the Lord Keeper *North*, and Lord *Hallifax*; there were ſome others preſent, whoſe Faces he did not ſee; he does not remember a Clerk with them; my Lord Keeper aſked ſome Queſtions, and ſo did the King. He was preſſed much to confeſs; he claimed the Liberty as an *Engliſhman*, not to accuſe himſelf; he was ſent to the *Tower*, and made cloſe Priſoner; he was kept in the ſtricteſt Cuſtody for twenty Weeks; when he had been there, after the Lord *Ruſſel* was executed, he had an Intimation, by a private Note, that there was an Intention to try him for a Miſdemeanour; he was bail'd out upon 30,000 *l.*

After this, it happen'd the Duke of *Monmouth* came in, and had a Pardon; but ſeveral coming to ſee him, he ſpoke ſome Things freely, which did not pleaſe the Court; and at the old Dutcheſs of *Richmond*'s, he ſpoke as if thoſe Gentlemen that were put to Death, died unjuſtly.

Whereupon, after the King was told this by a Lady, he would have him confeſs his being concern'd in the Plot; and a Paper was drawn to that Purpoſe, which the King would have him ſign, which he did.

A Gentleman, *viz.* Sir *James Forbes*, came to him from the Duke, with the Copy of the Paper the Duke had ſign'd, to own the Plot; as ſoon as he ſaw it, he ſaid, It was a Confeſſion of the Plot, and according to the Law then in Practice, it would hang him; becauſe a Paper had been given in Evidence againſt Colonel *Sidney*, upon which he was condemn'd: For if a Paper which was ſaid, and not proved to be writ by him, could ſupply the Place of a ſecond Evidence; then a Paper which could be proved to be written and ſign'd by the Duke of *Monmouth*, might much more properly be made uſe of as his Evidence, to hang other People.

He ſaid, he was told by Sir *James Forbes*, that the Duke, who was in a manner forced to do it, and perſuaded and overborne in it by the Lord *Howard*, when Sir *James Forbes* went back, the Duke was concern'd to Madneſs, and ſaid, If he lived till next Day, he would have the Paper again; and accordingly he went to the King, and told him he could not reſt till he had it; the King, with great Indignation, threw him the Paper, and bid him never ſee his Face more, and he believes he did not; and ſo the Duke went away, and by that he eſcaped the Trial then.

He was told by Mr. *Waller*, who is ſince dead, That the Duke's owning the Plot to the King, was the Cauſe of Colonel *Sidney*'s Death; for the King balanced before.

He was, after this, brought to a Trial for Miſdemeanour, and was convicted on the Lord *Howard*'s Evidence. He pleaded *Magna Charta*, that a *Salvo Contenemento*; but the Court fined him 40,000 *l.* and Impriſonment till the Fine paid, and Security for the good Behaviour.

The King made his Choice of putting him in Priſon, and he was committed to the Marſhal's Houſe in the *King's-Bench*, where he was ten Months.

He offer'd ſeveral Sums of Money; and they anſwer'd, they had rather have him rot in Priſon, than he ſhould pay the Fine.

After this, they put him in the common Priſon, where he was kept ten or eleven Months, very cloſe; then they contrived a Writ call'd a Long Writ, to reach his real and perſonal Eſtate, whilſt he was thus a Priſoner.

After this, he heard a new Witneſs appear'd, which was after the Defeat of the Duke of *Monmouth*. He was ſent cloſe Priſoner to the *Tower* by the Lord *Sunderland*'s Warrant; and put into ſuch a Room, where he had no Conveniency, and with two of the rudeſt Warders in the *Tower*, to lie in the Room with him.

After ſeven or eight Weeks he was removed to *Newgate*, where he was kept Cloſe eleven Weeks; his Friends offer'd Money for his Pardon to ſome in Power, who were the Lord *Jefferies*, and Mr. *Petre*; the Sum was 6000 *l.* and that was effectual. It is not poſſible for a Man to ſuffer more than he did.

By the Help of the Money, on Condition he would plead Guilty to his Indictment, he was to come off.

His Friends adviſed him to it, becauſe he could hurt none; there being none living of thoſe call'd the Council of Six, but the Lord *Howard*.

Whereupon, pleading Guilty, he was diſcharged; paying 3 or 400 *l.* to *Burton* and *Graham*, for the Charge of his Pardon.

As for the Subject-matter of what he confeſs'd, no Man will think he ought to be aſhamed, that thinks my Lord *Ruſſel* was murder'd; and he ſaid, This was the Way that our Anceſtors always took, when the Sovereign Authority came to ſo great a Height; as may be made out by many Inſtances: He ſaid, Cuſtom had made this the Law of *England*; and that all civilized and well govern'd Nations about us had uſed the ſame Way.

Notwithſtanding his pleading Guilty, he hath been very ready to ſecure the Kingdom; and he was one of the two or three Men, that received Letters from *Holland* of this Revolution: And he ſaith, He thinks King *William*'s coming into *England*, to be nothing elſe but the Continuation of the Council of Six; and if not, he deſires to be better inform'd.

Being aſked by the Lord *Howard*, how he came to ſend his Wife to the Man whom he thought was inſtrumental in obtaining the Paper, which he thought endanger'd his Life? He anſwered, Did he not ſend his Wife to the Lord *Jefferies*, Mr. *Petre* and others; who ſhould he ſend to but to thoſe in Power? And who could help him but thoſe in Power?

He did not think that the Lord *Howard* ſtruck directly at his Wife, or that his Lordſhip had any perſonal Pique againſt him, but againſt the Cauſe he was engaged in: His Wife did go ſeveral Times to the Lord *Howard*, and by her he believes he ſent him Thanks: He knows no

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ſolid Effects of his Kindneſs; if there were, he deſires the Lord *Howard* to tell him in what: He believes no Part of the 6000*l.* was given to the Lord *Howard*.

He never heard any thing of the Duke of *Monmouth*'s Confeſſion of the Plot, till after the Paper was ſign'd by the Duke, and ſent to him: He has heard it as common Talk, that the Duke had confeſs'd a Plot, and that Mr. *Waller* told him ſo indefinitely; he could not tell whether he meant before the ſigning the Paper, or no: He ſaith, what the Duke did at that Time was all of a-piece, whether ſpeaking or writing; he is ſure that it was with the utmoſt Reluctancy that the Duke ſign'd the Paper.

He remembers no more in the Cabinet Council, but the Lord *Radnor*, beſides thoſe he has already named; but believes there were three or four more.

He was bail'd the 28th of *November*, 1683, and Colonel *Sidney*, he thinks, was executed the 5th of *December* following.

The Duke of *Monmouth* appear'd very firm to him, and engaged to do his utmoſt to ſave Col. *Sidney*.

He ſaith, he came out of the *Tower* ſome Days before Col. *Sidney* was executed: He had an Intention to have viſited him, but his Friends thought it uſeleſs, and dangerous to them, and that he might write any thing he had to ſay: Accordingly, he wrote to him, that he would come to him, if he deſired it; but Col. *Sidney* charged him not to come, but to write, if he thought any Inconveniency would come of it. The Meſſenger which brought him the Meſſage before-mention'd, was Dr. *Hall*, now Biſhop of *Oxford*, who applied to the Dutcheſs of *Portſmouth* for his Releaſe; but her Anſwer to him afterwards was, That ſhe had try'd, and could do nothing, for they would rather have him rot in Priſon, than have the 40,000*l.*

Dame *Katharine Armſtrong* being examined, depoſed, That ſhe demanded a Writ of Error of the Curſitor of *London*, for Sir *Thomas Armſtrong*, and told him ſhe was ready to pay all due Fees; but he told her, ſhe muſt go to the Attorney General; and ſhe demanded it publickly in Court of the Lord Keeper *North*, but he ſaid it was not in him to give, but the King.

Mrs. *Jane Matthews*, being examined, ſaid, That her Father was ſent to Priſon, and could have no Counſel admitted to him, nor any Friends ſpeak with him, but in the Preſence of his Keeper: He had one Chain on him, and was kept cloſe Priſoner. She ſaith, ſhe queſtions not but to prove the Lord *Howard* perjured; for Sir *Thomas* could have proved by ten Gentlemen, and the Servants of the Houſe, thoſe baſe Reflections the Lord *Howard* made on him to be Falſhoods.

She ſaith, her Father demanded his Trial, and alſo Counſel, in the Court, but was denied both; the Chief Juſtice *Jefferies* telling him they had nothing but the Outlawry to go on. *Withens*, *Holloway*, and *Walcot*, were the other three of the Judges; and ſhe thinks he was brought from on board the Yacht by the Lord *Godolphin*'s Warrant.

She ſaith, Mr. *Richardſon* beat her Siſter while ſhe was aſking her Father Bleſſing.

She ſaith, That her Father was at *Sparrow*'s at Dinner, that Day that the Lord *Howard* ſwore he was not: And ſhe ſaith, That when her Father in Court ſaid, *My Blood be upon you, the* Lord Chief Juſtice *Jefferies* ſaid, *Let it, let it; I am Clamour-Proof.*

Mrs. *Katharine Armſtrong*, being examined, ſaith, That Captain *Richardſon* uſed her Father ill, and made him lie in a Chain on one Leg; and would not let her ſee him alone; and was rude to her, and ſtruck her in ſuch a Manner, that ſhe had ſo ſore a Breaſt, that ſhe could not put on her Bodice in three Quarters of a Year.

She ſaith, ſhe went with her Mother to the Curſitor of *London*, to demand a Writ of Error, but he refuſed it.

She went alſo on the ſame Errand to the Lord-Keeper *North*, Mr. Attorney, and the Lord Chief Juſtice, but had none.

Mr. *Richard Wynne* declared, That he was Solicitor to Col. *Sidney*: That the Colonel excepted againſt ſeveral of the Jury; to ſome, as not being Freeholders; and others, as being in the King's Service, and receiving Wages from his Majeſty.

That preſently after the Trial, the Lord Chief Juſtice ſent him Priſoner to the *King's-Bench*, for ſaying the Jury were a Loggerheaded Jury, and that they had not Evidence ſufficient to find ſuch a Verdict, or found a Verdict contrary to Evidence.

Mr. Serjeant *Rotherham*, being examined, declared, That he was of Counſel for Col. *Sidney*, and drew a Plea for him; which the Colonel deſired to have read, and threw it into the Court: It was to diſtinguiſh the Treaſon laid in the Indictment, and quoted the three Acts of Treaſon; but the Court told him, if the Plea had any Slip in it, he muſt have Judgment of Death paſs on him immediately. After this, he pleaded Not Guilty.

That he demanded a Copy of the Indictment, as his Due; but the Court refuſed it him: That Col. *Sidney* told him, that they proved the Paper they accuſed him of to be his Hand-writing, by a Banker, who only had his Hand upon a Bill. Col. *Sidney* quoted the Lady *Carr*'s Caſe, in the *King's-Bench*, *Trinity Term*, 1669, *Anno* 21 *Car.* II. wherein it was adjudged, That in a Criminal Caſe, 'tis not ſufficient for a Witneſs to ſwear he believes it to be the Hand, but that he ſaw the Party write it: The Words in the Caſe are, That it muſt be proved that ſhe actually writ it, and not her Hand *ut credit*.

That Col. *Sidney* aſk'd him, with the reſt of the Counſel, Whether all the Book ſhould be read at his Trial? The Counſel ſaid, it ought. The Book was by way of Queſtions, and merely a polemical Diſcourſe of Government in general, as far as Serjeant *Rotheram* could find, after reading in it ſeveral Hours: He believes it conſiſted of ſeven or eight Hundred Sheets.

Mr. *Joſeph Ducas*, upon his Examination, informed the Lords in ſubſtance as follows: That Colonel *Sidney* was taken up by a Meſſenger, before there could be any Pretence of Proof againſt him; for the Lord *Howard* (the only Witneſs) was not ſeized 'till fourteen Days after.

That when Sir *Philip Floyd* ſeized and carried away Col. *Sidney*'s Papers, he promiſed him, that the Trunk and Pillowbeer, in which they were ſeal'd up, ſhould not be open'd but in the Colonel's Preſence; but that Promiſe was not perform'd.

That they ſeized the Colonel's Goods and Money in the City and Country, five or ſix Months before any Indictment was found againſt him.

That the Colonel was brought to *Weſtminſter* the 7th of *November*, by an *Habeas Corpus* ſent the Day before, to be arraign'd upon an Indictment, tho' no Indictment was then found againſt him; and they kept him in a Tavern in the *Palace-Yard* an Hour, 'till they had got the Grand Jury to find the Indictment.

That the Colonel being carried to the Court of *King's-Bench*, and the Indictment read, he demanded a Copy thereof, but the Court refuſed it. That the Colonel offered a ſpecial Plea engroſſed in Parchment, and deſired it might be read; but the Chief Juſtice ſaid, That if the Attorney-General demurr'd, and the Plea were over-ruled, Judgment of Death ſhould paſs upon him; (and *Withens* ſaid, If your Plea be over-ruled, your Life is gone) and ſo he was forced to plead Not Guilty.

That he challenged ſeveral of the Jury, as being the King's Servants; and others, as not being Freeholders; but was over-ruled therein. Some Gentlemen (and very worthy Perſons) were, for Faſhion-ſake, put into the Pannel, and call'd, but did not appear; and it may be reaſonably thought, they were never ſummon'd.

That Col. *Sidney* was inform'd, that when the Jury was withdrawn, the Chief Juſtice, under Pretence of going to drink a Glaſs of Sack, went to the Jury, when they were conſulting about their Verdict.

That when it was demanded of the Colonel, what he had to ſay, why Judgment ſhould not paſs? He urged ſeveral Points of Law, but was over-ruled in every thing.

To this Effect was the Information of Mr. *Ducas*, a very valuable *French Proteſtant* Gentleman, and Col. *Sidney*'s Friend.

NUMBER XXXI.

A true Copy of Part of that Paper, which Mr. Aſhton *left in a Friend's Hands: Together with a Letter in which he ſent it encloſed* *.

[*The Paper begins with the Speech already publiſh'd; immediately after which he adds.*]

THUS much is contain'd in the Paper that I deſign to leave with the Sheriff. But being ſuddenly to give up my Accounts to the Searcher of all Hearts, I think it a Duty incumbent upon me to impart ſome Things farther, which neither the Intereſt nor Iniquity of theſe Times will, I conclude, willingly bear the Publication of, and therefore not fit to be inſerted in the Sheriff's Paper.

Some time after the Prince of *Orange*'s Arrival here, when it was expected, that purſuant to his own Declaration, and the King's Letter to the Convention, an exact Search and Enquiry would have been made into the Birth of the Prince of *Wales*, there was a Scheme drawn up of that whole Matter, and of the Proofs that were then, and are ſtill, ready to be produced, to prove his Royal Highneſs's Legitimacy; but no publick Examination being ever had, and the Violence of the Times, as well as Intereſt of the preſent Government, not permitting any private Perſon to move in it, thoſe Papers have ever ſince lain by: But it being now thought adviſeable by ſome to have them printed and publiſhed, and (as at firſt they were deſign'd) addreſs'd, at their next Meeting, to the Lords and Commons, entreating them to enquire into that weighty Affair, and to call forth, examine, and protect (for who elſe dares to appear) the many Witneſſes to the ſeveral Particulars therein offer'd to be legally prov'd, *&c.*

I was ordered to carry thoſe Papers to the King my Maſter, for his View, that his Leave and Approbation might go along with the Deſires of his good Subjects here; and they being taken with me, with ſome other Papers of Accounts, *&c.* in a ſmall Trunk, and amongſt my Linnen, and other private Things of my own, and not in the Packet, (my Lord *Preſton* being altogether a Stranger to the whole Proceeding,) by this Means fell into the Hands of our preſent Governors; who, though they wiſely waved the producing them as Evidence at my Trial, yet have I juſt Reaſon to believe my greateſt Crimes were contained in them; and do therefore conclude and hope, that I only am deſigned to be ſacrificed, who only knew of them. Nor am I ſurprized at it, ſince nothing, I think, can be more prejudicial to ſome Perſons preſent Intereſt, than the expoſing of thoſe Papers to the Publick, which will ſet that pretended Myſtery of Darkneſs in ſo clear a Light, that all Mankind muſt be convinced

* This to be read after *Aſhton*'s Speech, in *State-Trials*, Vol. IV. Pag. 483, 484.

of

of his Highneſs's being born of the Queen, and of their Wickedneſs, who have maliciouſly and deſignedly aſſerted that innocent Prince to be an Impoſtor. The Love and Compaſſion that I have for my native Country, as well as Charity, obliges me humbly to implore Almighty God to be merciful to it, and not to charge this great Sin to the publick Account, and that we may not farther provoke his Juſtice, by our wilfully continuing in Error and Miſtake. I beſeech him to put it into the Hearts of the Lords, *&c.* at their next Meeting, to examine into that whole Matter, and (if before that Time this be publiſhed) to enquire after, call for, and, if poſſible, retrieve thoſe Papers that were taken with me; whereby the Obſtinate will moſt certainly be convinced, and the Ignorant informed, the Doubtful confirmed, the Eyes of all opened, and a ſacred moſt important Truth made apparent to the whole World.

What I have next to impart, is not leſs material, *&c.*

[*But I do not think it a proper Time to publiſh what follows next, and therefore, according to the Will and Deſire of my dead Friend, expreſſed in his following Letter, 'tis reſerved to a fitter Opportunity; and ſhall now only inſert what he wrote to me relating to Mr.* Elliot.]

But I muſt not end this Paper till I have done one Act more of Juſtice, as well as Charity, in behalf of my Fellow-Sufferer, Mr. *Elliot*, who was, as I do moſt ſincerely believe, altogether ignorant, not only of the Contents of the Papers, but even of the Papers themſelves, and no way concerned, but as a Paſſenger; and yet, if Providence had not prevented our being all tried together, as was intended, that innocent Gentleman had moſt certainly ſhared in our Fates; for the Proofs, even at my Trial, lay ſtronger againſt him than myſelf: For Captain *Billop* did then, upon Oath (unneceſſarily, I think) declare him to be much more concerned and importunate than I was, to have the Pacquet thrown over-board; and yet ſingly from my being concerned, and ſpeaking to him on that Subject, a preſumptive Evidence (ſufficient, as it proved, with that Jury to find me guilty upon) was drawn, that I knew what was contained therein. But I do moſt heartily forgive them, and pray to God, that this poor Gentleman, by gaining of Time, may eſcape better, and that his innocent Blood may not be ſhed: And I hope theſe Words of a dying Man (though no legal Proof) may have ſome Weight with an impartial, conſcientious Jury (if ſuch a Jury he can get), whenever he is brought to his Trial.

John Aſhton.

[*This Paper, &c. came incloſed to me from Mr.* Aſhton, *before his Execution, in the following Letter:*]

SIR,

KNOWING your Friendſhip and Fidelity, to your, and your only, as unto ſafe and ſecure (though diſtant) Hands, I recommend the incloſed Papers; what chiefly relates to myſelf, being the firſt Part, I deſign to leave with the Sheriff; nor ſhall I be anxious about his Diſpoſal of it: But the following Paragraphs, that concern the Prince of *Wales*, and ———, I beg you to preſerve as Jewels, and publiſh them, either Part or all (chiefly that about the Prince), whenever Time or Occaſion ſeems to permit or require. And as to the Fitneſs of either, you may be pleaſed to conſult *A. B.*'s Advice; I doubt not but ſooner or later they will all be uſeful: And that you may the more value them, I do moſt ſolemnly proteſt, I have been as careful in what I have aſſerted for Truth, as if I were now at God's dreadful Tribunal; where I expect ſuddenly to appear, and by his Mercy hope to hear that raviſhing Sound, *Come, ye bleſſed*, &c.

What relates to Mr. *Elliot*, though I deſign to declare as much to ſome, who at his Trial may give it in Evidence, yet I thought it juſt to leave a Record of his Innocency under my Hand.

I have nothing to add, but to requeſt your Prayers, That God, of his infinite Mercy, would ſupport and ſtrengthen me in my laſt Moments, and take to himſelf,

Sir, Yours,

Newgate, Jan. 27, 1690-91. John Aſhton.

NUMBER XXXII.

A true Account of the Behaviour, Confeſſion, and laſt Dying Speech, of Captain HARRISON: *Together with the Paper writ by his own Hand, and delivered to a Miniſter at the Place of Execution, on* Friday *the fifteenth of* April, 1692 *.

[*By* Samuel Smith, *Ordinary of* Newgate.]

HENRY HARRISON found guilty of the wilful, barbarous Murder of Dr. *Clench*. He was bred up a Lawyer's Clerk; afterwards he liſted himſelf to be a Trooper in the Lord *Dartmouth*'s Regiment. Upon the 10th of *January* laſt, he offered to diſcourſe with me upon the Cauſe of his Confinement: I deſired that whatever he ſaid, he would do it in the Preſence of the Heart-Searching God, and as if he were at the Point of Death: He did profeſs he would do ſo. He ſaid, that he had been arraigned before for Murder; but it was only found *Manſlaughter:* That he did not after this walk ſo circumſpectly as he ought, but was guilty of prophaning the *Sabbath*, and many groſs Sins, which he lived in very ſecurely; but that God by this Diſtreſs had awakened him to call to Mind thoſe great Sins which he had committed, ſaying, that God had ſtrange Ways to bring Sinners to Repentance. Upon this I adviſed him ſincerely to juſtify God, as righteous, in finding him out in his Iniquities; or elſe Death would be more terrible, and his eternal State very hazardous, if he now trifled with God, and did not ingenuouſly confeſs his ſinful Courſe of Life. Hereupon he ſpoke very vilely of himſelf, as having been of a diſſolute Life; that he ſeldom minded the Publick Worſhip of God, nor the private Duties of Religion; that he was a common Swearer in ordinary Diſcourſe, and guilty of notorious Sins; that he never received the Sacrament of the Lord's Supper, becauſe it is an Obligation to amend an evil Life; which he being accuſtomed unto, he forbore the Sacrament, that he might not aggravate his Sins and future Condemnation. I told him, that his being unwilling to come under ſuch a ſacred Tie of Reformation, expoſed him deeper into *Satan*'s Snares of Temptation.

After this he freely acknowledged, that he had ſome acquaintance with Dr. *Clench*, and too much Familiarity with the Woman to whom the Doctor lent Money; and that upon his not liking of the Security given for the Repayment, the Doctor would not forbear any longer: *Harriſon* ſaid, this did fret him, yet he uſed no threatening Words; and ſaid, that if his Son had been acceſſary to ſo barbarous a Murder, and himſelf knew it, he would diſcover him. *Harriſon* made frequent Appeals to God, that he knew nothing of this Crime, in Thought, Word, or Deed. I replied, That if he made any falſe Appeal to God, it would very much hazard his Salvation; yea, that this would bring ſwifter Deſtruction upon him; and that his perſiſting to deny the Murder, would make him to be leſs credited; becauſe two Perſons who lately murdered their Wives, imprecated themſelves if they knew any thing of it, and yet, after an Hour's denying of it at the Place of Execution, confeſſed it at laſt. I told Mr. *Harriſon*, that he would be an inveterate Atheiſt, if he ſhould dare to die with an execrable Lye in his Mouth: He ſaid, after all Advice, that he would at his Death deny that he knew any thing of the Murder of Dr. *Clench:* He confeſſed, that he could not reflect on the Juſtice of the Court, nor the Integrity of the Jury in their Verdict, who had proceeded according to what was depoſed againſt him; and that he expected that the Sentence of Death would paſs upon him; yet he blames the Witneſſes for their being ſo poſitive in their Allegations againſt him, when himſelf is clear of Murder in his Conſcience: He ſaid, that God had juſtly ſuffered a ſhameful Death to befal him, becauſe he lived ſo long in an habituated Courſe of Viciouſneſs, without any Remorſe for it till now.

This is all the Account I can give of Mr. *Harriſon*; though I frequently, with others, ſollicited him to an ingenuous and free Confeſſion of his Crime, aſſuring him, that if he durſt die in the Denial of it, by any mental Reſervation, or Equivocation, he would merely ruin his Soul eternally.

A Copy of the Paper writ by Captain Harriſon's *own Hand, and delivered to a Miniſter at the Place of Execution.*

NOW I am come here to die, the People expect a Speech and Confeſſion; for the Words of dying Men always ought to be believed by the Survivors. I thank God, I am not an Atheiſt, nor a Man that makes Equivocations or mental Reſervations; but was educated in the Proteſtant Religion. The greateſt Grief I have (next unto my offending my great and gracious God) is that of my Relations; for no Diſaſter was ever in the Family before, (but I pray God give them Comfort) being all of them People of Reputation, as is well known to a great many

* To be read after his Trial in Vol. IV. Page 501.

in

in this Town, I having had ſome Differences with ſome of them. I do own I lived for ſome Time an irregular Life, which was diſpleaſing to them; God forgive me for it: And it was for my Sins God thought fit, out of his infinite Juſtice, to ſuffer this heavy Affliction to come upon me; which I firmly believe tends for my everlaſting Salvation, thro' the Merits and Mediation of Jeſus Chriſt my Saviour, who came into the World to ſave Sinners, and me the chief, as I have acknowledged and reputed myſelf; I aſſuredly now hope for Mercy at his Hands, being innocent of this black, bloody, inhuman Murder I now die for, in Thought, Word, or Deed, heartily forgiving thoſe that were the Authors of it; as alſo pray to God to forgive them, as I humbly beg of thoſe I have in any wiſe wronged to forgive me; deſiring all that ſee me this Day to live a godly, righteous, and ſober Life, to the end that they may attain everlaſting Life, through Jeſus Chriſt our Lord. Amen.

God bleſs the King and Queen, and the preſent Government, my Judges and Jury; the reſt I refer to a ſmall Treatiſe I have left with my Friends, concerning the Occaſion why I was ſuſpected to be one of the Murderers of Dr. *Clench*; which I have deſired them to publiſh very ſuddenly after my Death *(a)*. Farewel, in the Name of God. Amen.

God reward all thoſe worthy Divines who have aſſiſted me in my heavenly Journal ſince my Condemnation.

NUMBER XXXIII.

The CASE of SPENCER COWPER, *Eſq*; JOHN MARSON, ELLIS STEPHENS, *and* WILLIAM ROGERS, *Gentlemen (b).*

[*Publiſhed by them in* 1699.]

Firſt, in General,

THE ſaid four Gentlemen were in very good Employments, and eaſy in their Circumſtances; Mr. *Marſon* and Mr. *Stephens* are Attorneys at Law, in good Buſineſs, and Mr. *Rogers*, a Scrivener, in *Queen-ſtreet, London*, and of unſpotted Reputations; the laſt an utter Stranger to Mr. *Cowper*; when at once they were accuſed of being together, with the baſeſt and moſt execrable Crime that the greateſt Villain in the World is capable of committing.

Nay, in one Reſpect, they were accuſed of doing what the moſt hardened in Wickedneſs never did; that is to ſay, of having contracted the Guilt, and run the imminent Hazard of Murder, without any Temptation or Provocation to it, or other Cauſe whatſoever.

For it has pleaſed the Providence of God to fence their Innocence with ſuch Circumſtances, that their very Enemies and Proſecutors (though to make their Calumny to gain Credit in the World, it was neceſſary they ſhould aſſign ſome Cauſe; and therefore they made it be reported, That it was done for the Sake of Gain to Mr. *Cowper*) never once had the Impudence at the Trial ſo much as to ſuggeſt the ſame, or any other Cauſe, though often put in Mind of it: Nor can they yet, with all their Malice, invent, much leſs prove, the leaſt Ground or Reaſon that could incite them, or any of them, to the committing a Sin ſo unnatural in itſelf, and ſo generally deteſted and puniſhed, as well in this World as that to come.

And all this without any Proof that a Murder was committed by any one; it being the Verdict of the Coroner's Inqueſt, fairly impannelled (on the freſh View of the Body, on conſulting two Surgeons and a Midwife, who then had the View likewiſe, and a full Examination, which laſted near ſix Hours), That the Deceaſed drowned herſelf, being *Non compos mentis:* And 'tis humbly preſumed, that all unprejudiced Perſons who heard that Matter fully canvaſſed at the Trial, on the entire Circumſtances of the Caſe, were convinced there was no Ground to believe the contrary.

So that nothing but the Zeal of ſome Quakers for the Reputation of their Sect, to clear it from being liable to the ſame Infirmities the reſt of the World are, aſſiſted by the Heat of Faction, which is in moſt Boroughs, could ever have ſtirred up a Proſecution, and have made ſo much Noiſe in the World, with it, out of ſuch Matter.

Next, as to Particulars,

Mr. *Cowper*, the Day on which the Deceaſed's Body was found, was examined, among many others, before the Coroner's Inqueſt; and which is very remarkable, did then freely give an exact and full Account of every the leaſt Circumſtance of Fact that has been at any Time ſince proved, or pretended to be proved againſt him, throughout the whole Proſecution.

When the Circuit was ended (for this Accident happened while the Aſſizes were holding at *Hertford*), which unhappily drew theſe Gentlemen to that Town, about a Month after the Sitting of the ſaid Coroner's Inqueſt, the ſaid four Gentlemen were ſeverally ſent for, and readily came to the Lord-Chief-Juſtice *Holt*, and were examined; and what they then informed the Chief Juſtice of, on ſuch ſudden and ſeveral Examinations, has not been falſified or contradicted in the leaſt, but on the contrary was conſtantly adhered to, and at laſt proved and made good at their Trial.

That after their ſaid firſt Examination they were diſmiſſed without Bail, and thereby had an Opportunity of flying; as undoubtedly they would have done if conſcious of any Guilt. Then they were ſent for a ſecond Time and examined, and admitted to Bail; and afterwards (the Proſecutors having in the mean time collected ſeveral Informations and Certificates, containing Obſervations and Opinions of the Poſture and Manner in which the Deceaſed's Body was found, and what appeared on View thereof, five Weeks after it had been buried by the Proſecutors, and uſed before as they pleaſed) Mr. *Cowper* and Mr. *Marſon* were committed, and the other two ſtill continued upon Bail.

It is remarkable, that in procuring theſe Informations and Certificates, and in the whole Conduct of the Proceſs (ſo far as carried on in the Country), the Proſecutors applied themſelves at *Hertford* to thoſe very Perſons, and thoſe only, who they knew were profeſſed Enemies to Mr. *Cowper*'s Relations, upon account of Controverſies ariſing at Elections, and otherwiſe.

Mr. *Marſon*, on his *Habeas Corpus*, was afterwards admitted to Bail: But Mr. *Cowper* appearing in the *King's-Bench*, on the like Writ, the Court was equally divided as to his being bailed, and conſequently he was remanded to Priſon.

There he lay all *Trinity* Term, 1699, and Part of the long Vacation, for the Space of two Months, till the Aſſizes at *Hertford* drew near; and then, upon enquiring at the *Crown* Office, not hearing that any Writ was ſued out for his Removal, in order to his Trial at *Hertford*, he cauſed a Writ to be iſſued out for that Purpoſe, fearing his Enemies deſigned to keep him in Gaol, or at leaſt to continue the Slander and Proſecution as long as they could: The Proſecutors underſtanding this, ſued out the like Writ at their Inſtance; and Mr. *Cowper* was removed on that Writ, leſt going on his own Writ ſhould have ſhewn too great a Confidence in his Innocence, which was not to be endured.

Theſe few Steps of the Proceeding, out of many of the like Nature (which are omitted to avoid Length) may ſerve to ſhew that the Proſecution was far from being a faint one, but was induſtrious and artificial to the laſt Degree, and was (unluckily for the four Gentlemen concerned) aſſiſted by a Circumſtance not material to the Juſtice of their Cauſe, but notoriouſly true; That an Election-Intereſt was thought in great meaſure to depend upon carrying on the Accuſation: Which was the harder upon the four Gentlemen, for that none of them were at all concerned in that Controverſy, and three of them not ſo much as in a Wiſh one Way or other.

Notwithſtanding this unhappy Juncture, on their Trial their Innocence was ſo clear, that they were acquitted, to the Satisfaction of all indifferent Perſons there preſent.

After the Trial, which was at the Summer Aſſizes, in the Year 1699, their Proſecutors, that they might be further vexatious, and keep up the Talk againſt theſe four Gentlemen (though they had nothing to object to the Fairneſs of the Trial, nor any Defect in their Preparations towards it), immediately ſought out for an Heir Male to bring in an Appeal, to try them again, and put them to freſh Charges, and keep them longer under the Suſpicion of ſo great an Infamy on the very ſame Evidence, without any Pretence of the leaſt Addition to it.

In the ſame long Vacation, 1699, they found out the Infant, *Henry Stout*, (whoſe Name was afterwards made uſe of for bringing the Appeal) and might have ſued out the Writ of Appeal either before the then next *Michaelmas* Term, or in it, in the Vacation following, or in *Hillary* Term after; but their End was purely malicious to cruſh the Accuſed with the Calumny; and therefore, to keep up the ſame as long as poſſible, the Writ was not ſealed till the very laſt Seal within the Year after the Deceaſed drowned herſelf, and not above three or four Days before the End of that Year (the Time limited by the Law for bringing ſuch Writ), and then too without the Conſent, nay without the Privity or Knowledge either of the Plaintiff himſelf, or of his Mother, (his Guardian by Nurture) without whoſe Approbation the Writ, by Law, ſhould not have been ſued out, nor an Infant engaged in ſuch a Proſecution for Blood, which after a fair Acquittal is adjudged innocent.

About a Month after the ſaid Time limited by Law for the bringing the ſaid Writ was paſſed, (after ſeveral Letters had been ſent to the ſame Perſon, which made no Mention of the Appeal) a Letter was ſent either from ſome of the Proſecutors, or by their Order, to an Aunt of the Infant, deſiring the Child might be ſent up to ſue an Appeal; which the ſaid Aunt ſaid ſhe read to the Mother, and was the firſt Notice pretended to be given; but the Aunt being aſked (when this Matter was examined before the Lord Keeper) if ſhe then knew the Meaning of the Word *Appeal?* She owned ſhe then did not; and the Mother, to whom the Letter was read, affirmed before the Lord Keeper, ſhe did not then know what it meant, it not being explained in the Letter; but that ſhe imagined it was ſome Proceeding in order to put her Child into Poſſeſſion of the Deceaſed's Eſtate, or ſome Part thereof, which the ſaid *Mary Stout* (to induce the Mother to part with her Child, and help the ſaid *Mary Stout* to prove his Pedigree) had before fraudulently cauſed to be inſinuated to her.

And thus the Appellant or his Mother (who only could legally do it) were ſo far from having ſued out this Writ within the Year and Day, that they never heard of it till a Month after, and then only as aforeſaid; ſo that the ſaid Writ was unlawfully ſued out.

As ſoon as the Mother and the Infant (the Plaintiff) came to underſtand what had been doing, and that nothing was done towards letting the Child have any Part of the Eſtate, but only to proſecute a Suit of Revenge after an Acquittal, againſt Gentlemen of good Characters, and where no Murder at all had been proved; they declared their utter Diſlike

(a) The Book here ſpoken of, intituled, *The laſt Words of a dying Penitent*, containing a long, tedious Account of his Acquaintance with Mrs. *Vanwick*, and his Defence on his Trial, which is already printed, was not thought proper to inſert.

(b) This, and the following Caſe, though ſo material, are omitted in *State Trials*, Vol. V. and ſhould be read (after the Trial of *Spencer Cowper*, Eſq; in that Volume), Page 232. And as that Murder made ſo great a Noiſe, and the honourable Perſon accuſed having made ſo conſiderable a Figure in Life, it's thought proper to inſert thoſe curious Things that were wrote at that Time relating to it.

of the Proceeding, and, without ſo much as treating with any of the ſaid four Perſons proſecuted, or with any employed by them (purely from an Abhorrence of the Action, and their Reſentment of the Cheat put upon them, and the Advice of their Friends, as contrary to good Conſcience, and their Intereſt, to let *Mary Stout* the Petitioner have the proving the Infant's Pedigree in an Appeal, which was his Title to the Lands in *Mary Stout*'s Poſſeſſion), went with an Uncle and Aunt of the Infant, and demanded the Writ of the Sheriff, tendering him his Fee for the Return thereof, which he (not then knowing of any Guardian aſſigned) delivered to them: And though it ſhould be admitted, that the Sheriff in ſo doing did not ſtrictly purſue the Mandate of the Writ, which requires a Return at the Day in Court; yet the ſame Mandate is in moſt original Writs, and notwithſtanding the Sheriff never ſcruples to deliver the Party his own Writ, with the Return. And in this Caſe the Plaintiff and his Mother, and two of his neareſt Relations, demanding the Writ, and the Sheriff having no Notice of any other Guardian, it ſeems as excuſable in the Sheriff, as if a Plaintiff of full Age had come for his own Writ: But it is admitted the Court of *King's-Bench* was of Opinion, That the Sheriff in Strictneſs is to return his Writ at the Day and Place mentioned in the Return; and for not doing ſo, the Sheriff was fined, and paid two hundred Marks.

The Sheriff, before the ſaid Fine, was, by Order of the *King's-Bench*, examined very ſtrictly on Interrogatories in Writing, tending, among other Things, to diſcover how far the Appellees were concerned in procuring the Writ from the Sheriff; to which the Sheriff anſwered on Oath fully, in Writing, and very truly denied all Correſpondence with the Appellees, or any on their Behalf, touching the Delivery of the ſaid Writ, all Reward, or Promiſe, or Security; and, in ſhort, That he never knew of the Appellants and the other Perſons coming to him, nor any Ways had heard thereof, till he ſaw them: And then delivered the Writ and Return to them, as believing it fair and lawful ſo to do; and for no other Reaſon whatſoever.

Notwithſtanding the Petitioner preferred her Petition to the now Lord-Keeper (by Advice of her Counſel) to grant her a new Writ of Appeal in the ſame Form, as having ſufficient Authority ſo to do: And the ſaid Infant, the Appellant, and his Mother, preferred another Petition to the ſaid Lord-Keeper, diſowning the former Writ, as ſued forth without their Conſent; that they never knowingly approved thereof, and deſiring that no new Writ might iſſue in the Infant's Name: And the Lord-Keeper, being aſſiſted by the Maſter of the Rolls, the late Lord Chief-Juſtice of the *Common-Pleas*, the Lord Chief-Baron, and Mr. Juſtice *Powell*, one of the Judges of the *Common-Pleas*, the Appellant and his Mother appeared, and owned their ſaid Petition; and on a full Hearing on both the ſaid Petitions, and Counſel on both Sides, the ſaid Lord-Keeper, Maſter of the Rolls, Lord Chief-Juſtice, Lord Chief-Baron, and Judge *Powell*, were all of Opinion unanimouſly,

1. *That the* Chancery *had Power to relieve in ſuch Caſe, and renew the Writ, if it were juſt ſo to do.*

2. But, *That in this Caſe it was not juſt or reaſonable.*

The Reaſons then, and yet, inſiſted on to maintain the latter of theſe Points, were theſe:

1. Becauſe the Appellant Infant, or his Mother, Guardian by Nurture, had no Notice that the Writ was ſued out, till above a Month after the Year and Day paſt; and conſequently the Writ was never well ſued out: It being in no Body's Power, by Law, but the Appellant's, to ſue out ſuch Writ; and in Caſe of Infancy, as well as in the Caſe of an Appellant of full Age, the Writ is ſued out in the Perſon of the Appellant, and ſhould be done by the Conſent of his next Friends; and no Guardian aſſigned hath any Thing to do therewith till the Writ be pending.

2. Becauſe it appeared, that as ſoon as ever the Appellant and his Mother knew what was doing, they renounced the ſaid Writ, and, to prevent proſecuting the ſame, went and withdrew it from the Sheriff, together with an Uncle and Aunt of the Infant.

3. Becauſe the Appellees were none of them in the leaſt privy to this Tranſaction, nor did the Petition pretend to prove or alledge they were: But on the contrary, the Sheriff, having been examined on the ſtricteſt Interrogatories that could be framed, had, on his Oath, acquitted all the Appellees from having the leaſt to do in that Matter, but that he did it as conceiving it lawful and uſual to deliver the Plaintiff in any Action his own Writ; and not knowing at that Time that any Guardian was aſſigned to proſecute the ſame.

4. It is a Maxim in Law, That what is done amongſt others ought not to hurt a third Perſon; and as the Appellees would have been delayed and kept under Calumny by this Means, without their Fault; ſo no Security could be given them that the new Writ ſhould be literally the ſame with the former, as it ought to be; and no Writ being now legally to be proſecuted againſt them, they ought not to be deprived of the Benefit and Protection of the Law, without any Act or Default in them ſo much as pretended or aſſigned by the Petition.

5. The Infant, by Law Plaintiff in Appeal, has, notwithſtanding his Guardian, ſuch Power over the Suit, that three Caſes were cited wherein the Infant was by the Court permitted to be nonſuited, without and againſt the Conſent of the Guardian aſſigned to proſecute the ſame; and no Inſtance is to be found, wherever an Infant was denied ſo to be nonſuited.

6. If an Infant may deſiſt from proſecuting a Writ depending, without Conſent of his Guardian aſſigned, 'tis much more unreaſonable ſuch Guardian aſſigned ſhould force the Plaintiff to have or ſue out ſuch Writ, eſpecially to be reſtored to it whether he will or no, in an extraordinary Manner; which reaſon is enforced in this their unprecedented applying to the legiſlative Power in this Matter.

7. To make good the laſt Reaſon, a Petition was preferred to the Lord-Keeper by the Plaintiff and his Mother, againſt having the Writ, and diſowning their Knowledge of the Effect of the former Writ; and both, with an Uncle and Aunt of the Plaintiff, appeared to juſtify that Petition; and the Woman avowed, that when ſhe parted, with her Son, to ſue the Appeal, ſhe thought that it was in order to obtain the Deceaſed's Eſtate, as the Petitioner had fraudulently induced her to believe.

8. The Appellant and his Mother inſiſted, that the Infant being Heir at Law to the Deceaſed, and ſo intitled to her Eſtate, unleſs ſome Way diverted by Will or Settlement (which the Petitioner would never ſatisfy them in), and the Petitioner, with her Son *John Stout*, being in Poſſeſſion of that Eſtate, they thought it very improper the Petitioner ſhould have the proving the Plaintiff's Pedigree in an Appeal, which was his Title to an Eſtate the Petitioner held from him; for Recovery whereof the Infant, and his Mother as Guardian, preferred their Bill in *Chancery*; which Suit is ſtill depending.

Theſe Reaſons were enforced by ſeveral Conſiderations, ſhewing, that this Writ of Appeal, of all others, ought not to be favoured:

1. Becauſe ſued out clandeſtinely and fraudulently, as aforeſaid, by one who had no Power.

2. Becauſe deferred two whole Terms after the Acquittal on the Judgment, and not taken out till the laſt Seal, about four Days within the Year; which ſhews they did not deſign Juſtice, but to ſpin out a Scandal as long as they could, maliciouſly and vexatiouſly.

3. An Acquittal on Indictment, was a Bar to an Appeal at the Common Law; and though that Bar be taken away, *Stat. H.* VII. (which let in the Indictment within the Year and Day) leſt Perſons ſhould procure themſelves to be acquitted on Indictments by faint Proſecutions; yet, ſince this Proſecution was far from faint, the Appellees in this Caſe are within the Reaſon and Equity of that Plea; and the rather, for that the Petitioner, who would proſecute this Appeal, was the principal Proſecutor of the Indictment, and did it with all imaginable Induſtry, aſſiſted by the united Intereſt of the Quakers, and the Prejudice of a Party in the Town of *Hertford*, diſobliged on the Score of Elections.

4. Appeals have not been favoured ſince the *Stat. H.* VII. except in Caſes of Conviction, and Pardon obtained by Surprize, or after ſome clear or freſh Diſcovery by additional Evidence; which neither is, nor can be pretended.

The CASE of Mrs. Mary Stout, *Widow.*

IN *March*, 1699, being within the Space of a Year after the ſuppoſed Murder of Mrs. *Sarah Stout*, a Writ of Appeal was ſued out of the High-Court of *Chancery*, againſt *Spencer Cowper*, Eſq. *John Marſon*, *Ellis Stevens*, and *William Rogers*, Gentlemen, in order for the Trial of them, at the Suit of one *Henry Stout*, Heir at Law to the Deceaſed, and the Appellant named in the Writ of Appeal, who at the Time of ſuing out ſuch Writ was about the Age of ten Years.

Mrs. *Stout*, the Mother of the Deceaſed, after ſuch Appeal was ſued out, cauſed the ſame to be delivered to one Mr. *Boſtock Toller*, the Under-Sheriff for the County of *Hertford*, in order for his apprehending of the Appellees mentioned in the ſaid Writ. And ſhe fearing leſt he would be either remiſs or unmindful in the due Execution thereof, ſome ſhort Time after ſhe ſent a Neighbour of hers to Mr. *Toller*, to know what he had done, or would do, with the Writ? Whether he had executed the ſame, or whether he would return the Parties were not to be found? Which Meſſage was duly carried, with a particular Account, that Mrs. *Mary Stout*, the Mother of the Deceaſed, was the Perſon that ſent the ſame. To which Mr. *Toller* returned this Anſwer, *Mrs.* Stout *is a very buſy, uneaſy Woman; but however, when the Writ is out, I will make ſuch Return thereof as the Law directs.*

Mrs. *Stout* having received ſuch an Anſwer, and expecting to have a Return of the Writ, according to Mr. *Toller*'s Promiſe, on the thirteenth of *April* following, was, in order thereto, and for the further deſigned Proſecution of the Matter, duly admitted Guardian to the Appellant; and as ſuch, on the fifteenth of the ſame Month of *April*, being the firſt Day of the then *Eaſter*-Term, appeared perſonally in the Court of *King's-Bench*, in order to arraign the Appellees, in caſe the Under-Sheriff ſhould have returned them taken.

Upon ſuch Attendance of Mrs. *Stout*, Mr. *Toller* was frequently called, pending the whole Time the Court ſate, (the Writ being then returnable) to make a Return of the Writ: But he made Default, and inſtead thereof Mr. *Marſon*, one of the Appellees, appeared in Court, and prayed either to be arraigned or diſcharged; though the Writ was not then, or ever ſince, ſeen or returned in Court: So that ſuch Mr. *Marſon*'s Motion appearing only to be a Shew, or Bravado, no Damage or Advantage being to be ſuſtained or gained to him thereby, the ſame was rejected.

Upon the ſecond Day of the ſame Term, the Court of *King's-Bench* was moved on the Behalf of Mrs. *Stout*, that a ſhort Day might be appointed peremptorily for Mr. *Toller* to make his Return. But then (though Mr. *Marſon* knew of the Writ of Appeal's coming to Mr. *Toller*'s Hand, as appears by his praying an Arraignment but the Day before) it was ſuggeſted in Court, That no writ of Appeal was ever left with Mr. *Toller* againſt the Appellees: And upon ſuch Suggeſtion, Mrs. *Stout* then loſt the Benefit of her Motion, and was forced the next Day to get an Affidavit of the Delivery of the Writ, which ſhe accordingly did; and thereupon ſhe moving again for a peremptory Return, then the Under-Sheriff's Receipt of the Writ of Appeal was granted, and thereupon a Rule of Court obtained to compel him to appear, and make a Return of the Writ; which Rule was ſerved, and thereupon Mr. *Toller* ſoon after attended, and by Affidavit informed the Court, That upon the ſixteenth Day of the ſame Month of *April* (which was a Day after the Return of the Writ, and three Days after Mrs. *Mary Stout* was admitted Guardian to the Appellant) he delivered up the Writ into the Infant's Hand.

Upon which Account given by Mr. *Toller*, the Court of *King's-Bench* ordered him to be examined upon Interrogatories, touching the Delivery of the Writ; and accordingly Mrs. *Stout* the Guardian prepared the ſame, but could not without conſiderable Difficulty get him examined (being forced to be at the Charge of two or three Orders of Court, for that Purpoſe, before he came). At laſt his Examination was taken, in and

by

by which he owns the Receipt of the Writ of Appeal; and that he was informed, that Mrs. *Mary Stout*, the Mother of the Deceaſed, proſecuted the ſaid Writ; that ſhe ſent the ſame to him; and that the Infant, the Appellant, was a perfect Stranger to him, when he delivered it into his Hands: But then, to extenuate the Matter on his own Behalf, the Reaſons he alledges in his Examination for ſuch his Delivery, are, That the Appellant came with the Mother, Uncle, Aunt, and one Mr. *Woodford*, an old Acquaintance of his, for the Writ; and that Mr. *Woodford* informed him of the Reality of the Appellant, and his Relations; and delivered him a Note under the Hand of *William Cowper*, Eſq. purporting the ſame, That the Infant was the Plaintiff in the Appeal; that one of the Women was his Mother, and that the other Man and Woman were his Uncle and Aunt; which, together with the ready Anſwers they gave to ſuch Queſtions as Mr. *Toller* aſked them, induced him to believe them to be the real Parties; as in his Examination he ſets forth.

Mr. *Toller* ſays further, That on the twenty-ſixth of the ſame Month of *April* he deſired the Infant, his Mother, Uncle, and Aunt, to deliver him back the Writ; but they declared, That the Infant with Advice had burnt the ſame.

Mr. *Toller* in his Examination gives this Account; That ſome ſhort Time before his Receipt of the Writ, he received a Letter from Mr. *Will. Cowper*, to know whether any Writ of Appeal was come to his Hands againſt Mr. *Spencer Cowper*; to which he anſwered there was none: That ſome ſhort Time after ſuch Writ was come to his Hands, he received another Letter from Mr. *William Cowper*, to the ſame Effect as the former; to which Mr. *Toller* anſwered there was; and ſent him the Contents of the ſaid Writ: That after ſuch Writ came to his Hands, Mr. *Spencer Cowper* ſent him a Letter, to know whether he had received any Writ againſt him; to which Mr. *Toller* informed him he had. So that by Mr. *Toller*'s own Examination a perfect Correſpondence is owned; and an Intelligence from time to time, and from one Party to another, is given.

That upon the laſt Day of the ſaid Term, Mr. *Toller*'s Examination was reported to the Court of *King's-Bench*; who, upon hearing the ſame, were of Opinion, That he was guilty of an high Miſdemeanour, and was in Contempt of that Court; and thereupon was committed to the *Marſhal*, and fined Two Hundred Marks.

That Mrs. *Stout* having received no Satisfaction for the Blood of her Daughter, by the Under-Sheriff's being ſo fined, did petition the now Lord Keeper for a new Writ; the Time being elapſed then for the ſuing out of another in courſe: At which time alſo there was a croſs Petition preferred in the Infant's Name, praying, That no new Writ of Appeal ſhould be ſued out in his Name. And the ſubject Matter of both Petitions being debated before the now Lord-Keeper, the Maſter of the Rolls, the late Lord Chief Juſtice *Treby*, the Lord Chief-Baron *Ward*, and Mr. Juſtice *Powell*; upon ſuch Debate it not then appearing, by any poſitive Proof, that the Appellees in the Writ, nor any of them, were privy to the Deſtruction of the Writ; it was therefore thought hardly reaſonable that a new Writ ſhould be granted; which was a great Cauſe of Mrs. *Stout*'s Petition being rejected.

Now Mrs. *Stout*'s Petition was grounded purely upon another Bottom, (ſhe not imagining that ſuch an Objection would have been ſtarted) for ſhe was adviſed, that if Juſtice had been obſtructed, whether it had been by Accident or Deſign, in either Caſe a ſuitable Remedy might have been found: As, ſuppoſing the Writ of Appeal had been accidentally burnt when in the Sheriff's Cuſtody, as it really was when it was out, in reſpect to have a Diſcovery of Truth, the Court, which firſt gave the Writ (ſhe was adviſed by Counſel learned in the Law) could ſupply the Loſs of it.

Had ſhe imagined that all the Appellees would have ſo much as inſtanced their total Ignorance as to the Deſtruction of the Writ, ſhe could have much better prepared herſelf to have given them an Anſwer; ſhe could have ſet forth how the Infant, his Mother, and the Appellees Attorney, went in a Coach with four Horſes to the Under-Sheriff at *Hertford*, and there took the Writ of Appeal from him, and from thence brought it to *London*; ſhe could have informed the Court of a more particular Intelligence, lately confirmed, concerning the Deſtruction of the Writ, by whoſe Order, and at whoſe Chamber, the ſame was burnt: Which Matters, if yet examined, will ſufficiently evince whether the Appellees, or ſome one of them, were privy or not to the Deſtruction of the Writ.

There was an objection againſt Mrs. *Stout*'s Petition, That the Writ of Appeal was never well ſued out (the Infant, nor his Mother, not knowing of the ſame till afterwards); but to that, beſides the Proofs Mrs. *Stout* could have given to the contrary, ſhe was and is ſtill adviſed, That her being duly admitted Guardian, by the free conſent of the Infant (though ſubſequent in Time to the ſuing out of the Writ), the ſame in Law is very authentick, and makes the ſame well ſued out. And it is preſumed, that no Perſon will ſay, That the Lord-Keeper, and the other Judges, did all agree to the contrary, upon Debate of the Matters before them.

It was mightily inſiſted upon by the Counſel for the Appellees, at the hearing of both Petitions, as if Mrs. *Stout* ſhould cauſe herſelf to be admitted Guardian to the Infant, only to protect her Eſtate from the Infant, and that without the Privity of the Infant's Mother, or any of his Relations: But (beſides the very Admittance itſelf, which is purely for proſecuting the Appeal, and for nothing elſe) Mrs. *Stout* was always ready to diſcover the Title of her Eſtate; and never but declared, That the Infant had no Right thereto; and as to the Infant's Mother not knowing of Mrs. *Stout*'s Deſigns, it is very eaſily anſwered; for it is not only ſworn, and the Affidavits filed in the *King's-Bench*, That Mrs. *Stout* wrote to the Infant's Mother what her Deſigns were; but alſo a particular Account is in thoſe Affidavits ſet forth, How willing the Infant's Mother was to ſend her Son to Mrs. *Stout*, ordering one of his Uncles to carry him to her, for Mrs. *Stout* to do with him as her Occaſions required; and withal, directing ſuch Uncle to deliver her Son to Mrs. *Stout*, and to none but her, and to do according to her Directions.

It hath commonly been reported, as if the Proſecution in this Appeal hath been purely vexatious, begun by a Body of Quakers, and eſpouſed by a Faction at *Hertford*, againſt Mr. *Cowper*'s Intereſt. But whoever the Fomentors or Spreaders abroad of ſuch Reports are, they would do well to conſider, if it were their own Caſe, to have an only Child murdered, and her Reputation rendered infamous to Poſterity, whether Nature and Duty would not oblige them to uſe all Means to make a Diſcovery of the Cauſe thereof? And whether they would not think it hard to have their own Endeavours reflected on, and their utmoſt Diligence accounted to be the Cauſe of a Party?

It hath alſo been reported, and perhaps by ſome of the Appellees may be objected, That the very Method in the Proceſs of this Appeal hath been malicious, in delaying the ſuing out of the Writ, until the Time was almoſt elapſed, thereby to keep the Appellees in an uneaſy Suſpenſe. But in Anſwer to that 'tis confeſſed, That it was much longer before the Writ of Appeal was ſued out than was deſired or expected; becauſe it was near half a Year before Mrs. *Stout* could find out (though all that while ſhe made a diligent Search) the proper Perſon to make an Appellant; and after ſhe had, ſhe was forced to examine moſt of the Regiſters in *London* and *Southwark*, to make out his Pedigree; and which as ſoon as ſhe had done, the very next Day ſhe cauſed the Writ of Appeal to be ſued out: So that it was her Misfortune, and not her Malice; it being under the Neceſſity of ſo long a Delay.

It is commonly urged, as a ſtrong Argument againſt a ſecond Trial of the Appellees, That there is no new Evidence that Mrs. *Stout* hath againſt them: But ſuch Perſons, whoever they are, not only aſſert what they are totally ignorant of, but alſo conclude, that Mrs. *Stout* takes a great deal of Pleaſure (eſpecially now in her old Age) in being in a conſtant Fatigue, and conſiderable Expence, purely to be rendered ridiculous to the World, and uneaſy to herſelf, in the freſh and daily Renewals of her great Loſs. In Anſwer to which, ſhe is ſufficiently aſſured, that ſhe goes and acts by other Principles and Deſigns; and that ſhe hath more material Evidence than ever yet was made publick; and that ſhe believes the Appellees (though they pretend their Innocency is fenced providentially with ſuch Circumſtances as that they need not fear) do not care to come to the Teſt; or elſe why ſhould there be ſo vigorous an Oppoſition againſt ſo plain an Act of Juſtice, if there was no Matter of Fact that could be proved againſt them, nor no concurring Circumſtances that would any way affect them? (as they ſeem to inſinuate.) It would have redounded much more to their Honour and Reputation, and have wiped off all Occaſion of Reproach, if (inſtead of ſo mean an undermining of Juſtice, in the Deſtruction of the Writ of Appeal) they had undergone a ſecond Trial; it being impoſſible (according to their own Aſſertions) for them to miſcarry, or be found guilty. All Perſons muſt certainly know, that it would be no Prudence in Mrs. *Stout* to divulge her Evidence before a Trial; and if ſhe doth but act prudently, for any therefore to alledge ſhe hath no Proof, is purely to ſpeak at random and at a venture, and ought to be regarded accordingly. [But this Affair came to nothing.]

The Hertford *LETTER: Containing ſeveral brief Obſervations on a late printed Trial, concerning the Murder of Mrs.* SARAH STOUT.

SIR.

I Am favour'd with yours of the 20th *ult.* whereby I perceive your Pleaſure is, That I ſhould give you my Sentiments concerning Mrs. *Sarah Stout*'s Death, the Trial, *&c.* In Anſwer, I am very ſenſible of my own Weakneſs, and how unfit I am to enter into a Controverſy, wherein ſo many Doctors have been worried already: Nevertheleſs, in Obedience to your reiterated Commands, (though in doing it I may expoſe my own Ignorance) I ſhall give you my Thoughts concerning the Natural Cauſe of Drowning, Floating of dead Bodies afterwards, the various Sentiments of the Doctors, the Manner of her Death, the Letters produced in Court, her Melancholineſs, why no Mention was made of the Money; and laſtly, concerning two publick Experiments, whereof one was made here, and the other in the River of *Thames*.

It is a common Obſervation of moſt People, not uſed to dive, that upon their plunging themſelves in the Water, whether it be voluntarily, or involuntarily, they find a great Confuſion of their Spirits; ſo that it is morally impoſſible for them to regulate their Actions in this Surprize, by the Dictates of Reaſon; in this Conſternation, they lay hold on any thing that comes in their way, not conſidering whether it may contribute to their Sinking or Swimming.

In this Hurry of the Spirits (occaſioned partly from the Noiſe their Fall makes in the Water, and partly from its running into their Ears, Noſtrils, *&c.*) the whole Animal Oeconomy is brought into Diſorder. In this Confuſion, it is no ways ſurpriſing, that Water, wherein they are immerſed, ſhould inſinuate itſelf into ſome Vacuities, no ways adapted for its Reception: And it being obvious to all, That no Man doth, or can live without Reſpiration, whatever Element ſoever he is in; if in the Air, he ſucks that in, which naturally flows into the Lungs; if in Water, what comes into the Mouth, as long as his Senſes continue, he ſwallows that down the Gullet; as long as he doth not breathe, there is little danger of Drowning, but on the firſt Inſpiration, if he is at the Surface of the Water, 'tis much if he doth not ſwallow down the Wind-pipe (with the Air) ſome ſmall Quantity of Water; but if he is totally immerſed in it, 'tis not improbable, that upon Inſpiration, a far greater Quantity of Water than Air will enter into the Cavity of the Lungs.

In every Expulſion of Air out of the Lungs, the *Epiglottis* is lifted up; if the Mouth, at the ſame Time, ſhould be full of Water, 'tis impoſſible but ſome of it will paſs down the Windpipe; as is obſervable in thoſe that accidentally laugh while they are a drinking, if a Drop falls into the *Aſpera arteria*, it will cauſe a Coughing, which is a convulſive Motion of the Lungs, *&c.* whereby Nature doth commonly throw up any thing that doth caſually fall upon them; by this ſtruggling of Nature, to expel the Water already ſlip'd down, the *Epiglottis* is lifted up, and inſtead of ejecting the Water juſt ſwallowed, the Mouth being full of it, a great deal more forceth itſelf down, by its natural Gravity, which gravitates the

the more, by reaſon of the Cylinder or Cone of the Air, that continually preſſeth on its Superficies. As ſoon as the Senſes are gone, the *Epiglottis* is kept open by the Force of the Stream that runs into the Wind-pipe, 'till the *Bronchia*, and all their Ramifications, are filled: As long as the Senſes continue, they ſwallow moſt of the Water that comes into their Mouths, into their Stomachs; but when they are near ſuffocated, the Water runs into thoſe Ducts, where it meets with the leaſt Reſiſtance.

So long as Life continues, there is a convulſive Struggling of Nature, to expel out of the Lungs all thoſe Things that are noxious to them, eſpecially Water; being never uſed to be Receptacles for any thing but Air, they uſe their utmoſt Efforts to eject it, by a violent contracting their Lobes nearer together; by theſe exorbitant Contractions, the Water contain'd in the Ramifications of the *Bronchia*, &c. are ſometimes forced into the Cavity of the *Thorax*, either by dilating the Pores of the thin Membrane that inveſts the Lungs, (as Quick-ſilver is forced by the Preſſure of a Hand through a Piece of Leather) or by the Rupture of their Tunicle, or by ſome minute Veſſels, not yet deſcribed by Anatomiſts. If any Practitioner in Phyſick, *&c.* ſhall aſſert, That Anatomy is brought to a *Ne plus ultra*, and that all Ducts, through which the Juices of Animals are ſtrain'd, are detected; I would deſire them to tell me through what Veſſels the *Pus* in an *Empyema*, where the Matter lies on the Midriff, when there is no Ulcer of the Lungs, is expectorated; or through what Paſſages, when 'tis carried off by Urine, 'tis convey'd into the Kidneys; or how bitter Injections caſt into the *Thorax*, can affect the Mouth with its Taſte (as the Obſervations of Phyſicians do demonſtrate); or let them read a Treatiſe of *Robert Boyle*, Eſq. call'd *New Experiments Phyſico-Mechanical*, touching the Spring of the Air; where, amongſt many curious Obſervations about the Lungs, he aſſerts, *That the diligent* Wallæus *relates, That he, divers Times, obſerved in the Diſſection of Live Bodies, that the Membrane that inveſts the Lungs, had Pores in it as big as the longer ſort of Peas*, P. 343.

Water is as frequently found in the Cavity of the *Abdomen*, as of the *Thorax*; but by what Ducts or Paſſages (when there is no viſible Rupture of the Coats of the Stomach or Guts) it is carried there, I leave it to the Microſcopical Anatomiſt to determine: I conceive it enough for me, at preſent, to tell you, that it is Fact. I am conſcious you are not ignorant that there are many Things that happen in the Animal Oeconomy, that cannot be proved *a Priori*; yet when they are *a Poſteriori*, they are admitted by the Schools as undeniable Arguments. If any are ſo Sceptical as to deny what is not capable to be proved *a Priori*, they would be put to it to prove the Circulation of the Blood, Motion of the Animal Spirits, or where, or how the Chyle is tranſcolated through the Coats of the Guts.

As ſoon as the Lungs, Stomach, *&c.* are full of Water, the Body naturally ſinks, and riſes no more, 'till there is a Putrefaction in the inward Parts, which in cold Countries is longer than in hotter Regions; but the ſooner Putrefaction is begun, the ſooner the Corps floats, whereof no certain Calculation can be made, the Time of their riſing differing, with reſpect to the Region, and in the ſame Climates with reſpect to the Seaſons of the Year: In theſe Parts, according to the common Reckoning, they float in Nine or Ten Days.

The common Cauſe aſſign'd for floating of Bodies drown'd, is, the breaking of the Gall, which you know is a vulgar Error; ſo that I need ſay nothing in Oppoſition to it: The Cauſe aſſign'd by the Moderns, is Putrefaction; but how this Putrefaction renders the Body more buoyant than 'twas before, is not obvious to every Eye; therefore I ſhall give you my Thoughts concerning its *Modus agendi*. Putrefaction is a Species of Fermentation; by Fermentation the Air contain'd in the Cavity of the Breaſt, Body, Stomach, *&c.* tho' ſeemingly full of Water, yet they contain great Quantities of Air, which is rarified with the other Juices, proportionable to the Degrees of Putrefaction; and this inſenſible Dilatation of the Body encreaſes gradually, 'till the Corruption hath made a Paſſage through the Skin; ſo that a Perſon that is not above 20 Inches in Circuit when firſt drowned, after he hath lain ſome Weeks in the Water, will be at leaſt 30 or 40 Inches in Circumference: This gradual Dilatation of the Body, I conceive, is the ſole Cauſe of its riſing to the Surface of the Water, after ſome certain Time, and alſo of its more or leſs Buoyantneſs afterwards.

Having given you my Thoughts concerning the Cauſe of Drowning, of the Floating of the Corps afterwards; I ſhall now acquaint you with my Notions, why Bodies thrown dead into the Water do not ſink, and why ſome are more buoyant than others.

It is obſervable, that human Bodies, after Death, admit no Water, eſpecially ſuffocated, as the Experiment made ſome Weeks ſince doth evidently demonſtrate; becauſe, as ſoon as Death ſeizes a Man, the Sphincter Muſcles, in all Parts, do naturally contract themſelves, for which Reaſon, it is not ſo eaſy to inject any Liquids into the Parts that have them, as before: By this Secluſion of Water, the Vacuities (which in drown'd Creatures are full of Water) are, in thoſe that come by their Death ſome other Way, full of Air, which, by natural Experiments, is proved to be a thouſand times lighter than Water; and by the ſame ſort of Experiments, ſolid Fleſh is obſerved to be but a little heavier than Water: If you grant this, which is eaſily demonſtrated, it will be no hard Matter for any conſiderate Man to believe, that Fleſh (which hath many large Cavities in it fill'd with Air) may float. If you doubt the immediate floating of human Bodies, thrown dead into the Water, you may, for your Satisfaction, conſult the Opinion of Seamen, who have been the laſt War in ſeveral Engagements with the *French*, or thoſe that have been a *Guinea* Voyage; where, when they throw the dead Negroes overboard, they never lay any Weight to their Feet, to ſink them, as they do to white Men: It is certain that all thoſe Negroes do immediately float; I have ſpoken with ſeveral, lately come from thence, that, if Occaſion were, would atteſt it with an Oath.

Bodies are more or leſs buoyant, either in reſpect to themſelves, or in reſpect to the Medium wherein they float.

If the Perſon died in the very Act of Inſpiration, the Lungs will be full of Air, by which the Breaſt will be ſenſibly dilated. That the filling of the *Thorax* with Air may be a Cauſe of floating, is evident from thoſe that can lie on their Backs without ſtirring Hand or Foot; it being obſervable, that thoſe do fill themſelves as full of Air as they can, and that as long as they can hold their Breath they float, but on the very Inſtant of breathing they ſink. If they have a large Cheſt, or are very lean, they will float the loftier.

If they are caſt into Salt Water, they will be more buoyant than in freſh; it being experimented, that Ships will ſink ſome Inches lower under Water in the *Thames*, than when they were at Sea; if into deep Water, all Men obſerving they can ſwim more eaſy in deep than in ſhallow Water.

On the contrary, if the Perſon died in Expiration, had a ſmall Cheſt, was fat and fleſhy, or was thrown into freſh or ſhallow Waters, he will ſwim the more under Water.

I do not perceive ſo great a Diſcordancy between the Doctors that were Evidences for the King, and their Oppoſites, as ſome ſeem to inſinuate. The Witneſſes for the King depoſed, That it was their Opinion, that no Perſon ever was, or poſſibly could be drown'd, that had no Water in their Lungs, Stomach, &c. and that as far as they had made any Obſervations on drown'd Perſons, they always found great Quantities of Water in the inward Parts of drown'd Perſons; Part thereof uſually, in lifting them out of the Water, runs out of their Noſe or Mouth; that upon their Diſſection, they had found conſiderable Quantities of it in the Cavities of their Bodies; and that it was their Judgment, that the inward Parts of drown'd Perſons would putrefy in leſs than ſix Weeks Time. Whether theſe are not undeniable Truths, I leave it to the Determination of yourſelf, and all unbiaſſed People that have made any real (not notional) Obſervations on drown'd Bodies.

Their Learned Antagoniſts, whoſe ſole Endeavour and Buſineſs, as far as I could perceive, was to render it a mute Caſe, by their ſtrenuouſly urging, *That two or three Ounces of Water was ſufficient to drown a Perſon*; not from any Obſervations on human Bodies, but from a private Experiment on a Dog or two that was half hang'd, as I am told; and I am apt to think there was ſome Artifice uſed, ſeeing the Experiment did not ſucceed, when made publickly in the River of *Thames* by the ſame Perſon.

Dr. *Sloane* ſaith, That *Caſes of this kind are very uncommon*, (*viz.* for Mrs. *Stout* to be drown'd without any Water in her) *and none of them have fallen directly under my Knowledge*; nor, as I verily believe, under any other Perſon's ſince the Creation of Man: Then he tells you, that *Water ſwallowed by the Gullet, into the Stomach, will not drown the Perſon*; (Who ſaid the contrary?) *But it is that which goes into the Windpipe and Lungs that ſuffocates*; and confirms it with an Obſervation, ſaying, *I have obſerved ſome Spoonfuls, if it went the wrong Way, to have choak'd or ſuffocated the Perſon.* Note, he doth not ſay drown'd, neither do I think any Perſon can properly be ſaid to be drown'd, that hath not ſwallow'd above two or three ounces of Water, but rather ſuch as are (as the Doctor ſaith) choak'd or ſuffocated. In the ſame Paragraph he tells you, that *Whether a Perſon comes dead or alive into the Water, he believes ſome Quantity will go into the Windpipe:* Then Water in the Windpipe is no certain Sign of a drown'd Perſon; I am of another Opinion, which our Experiment doth ſeem undeniably to prove.

Being aſk'd by the Judge, Whether the Parts would not putrefy in leſs than ſix Weeks, if there had been Water? His Anſwer was, *My Lord, I am apt to think it would have putrefied the Stomach leſs than the Lungs:* How direct and ſatisfactory this Anſwer was to the Queſtion, you may determine. I obſerve a general Queſtion, (for what Intention I cannot divine) which was, Whether any Water would go into the *Thorax?* If it did, or did not, I cannot conceive what Benefit or Prejudice it would be to this Caſe, though I am apt to think the Membrane that inveſts the Lungs, may eaſily be torn by violent Coughing, which is obſerved in all Perſons when any thing falls into the Windpipe.

Near the Foot of his Diſcourſe, he ſaith, *I am apt to think, if there was any Quantity* (of Water) *in the Lungs, the Sponginеſs of the Part would ſuck up ſome Part of it:* Who ſaid the contrary? But, Doctor, If they had ſuck'd up any Part, would not her Lungs have been moiſter, than if they had ſuck'd up none? But Mrs. *Stout*'s were rather drier than uſually they are in dead Perſons; therefore —— *As to the Stomach, I have not known it tried*; Have you known it tried, as to the Lungs? If not, we are as much in the Dark as before, unleſs we take your *I am apt to think* for Demonſtration.

This Doctor cloſes his Sentiments with *If there was a great Fermentation, a great deal of it* (Water) *would riſe up in Vapours or Steams, and go off that way:* Here he terminates all with an *If*. Suppoſe I ſhould grant him there was a great Fermentation, to be as true, as I am confident 'tis falſe, his Inference I doubt would not follow, *viz.* That *a great deal of it would riſe up in Vapours or Steams, and go off that way*; if it ſhould riſe into Vapours in the Stomach, I am ſubject to believe, that the Coldneſs of the Parts through which they muſt paſs, would condenſe them again, before they could get out of the Body. What Way he means by *That Way*, I cannot imagine; if 'tis through the Gullet, the Contraction of the Mouth of the Stomach, Gullet, (which as Dr. *Garth* ſays) contracted or purſed up by a Muſcle in the nature of a Sphincter, and the Cloſure of the Lips, *&c.* would either keep them in the Stomach, or elſe the Coldneſs of the Part, thro' which they muſt of Neceſſity paſs, would condenſe them in their Paſſage out of the Body: If through the Guts, the *Pylorus*, the Coldneſs of the Guts, or the *Sphincter Ani*, would obſtruct their Paſſage: If it could be imagined that the Subtleneſs of theſe Vapours could get thro' the *Coats* of the Stomach, I conceive the Coldneſs of the *Omentum Peritonæum*, and the Thickneſs of the *Muſcles*, *Fat*, &c. of the *Abdomen*, would impede their *Exit* out of the Body. In fine, it ſeems very probable to me, that if there had been any Fumes raiſed in the Stomach by Fermentation, that they could never get an *Exit* through ſo many Impediments.

Dr. *Garth* tells you, that *It is impoſſible that the Body* (of Mrs. *Stout*) *ſhould have floated, unleſs it had reſted, or been intangled amongſt the Stakes.* This is a certain Truth, if ſhe had been drown'd; but if ſhe was thrown in dead, there is nothing more common than for it to float; and this

this my Aſſertion is conſentaneous to the univerſal Experience of thoſe Seamen that uſe the Negro Trade; for when any of their Slaves die, they throw them over-board, without any Weight to their Feet, and theſe float immediately.

That ſhe was found ſideling in the Water, is a mighty Argument with this Doctor that ſhe did not float; but grant ſhe was intangled (which is denied by ſeveral) between the Stakes, as 'tis aſſerted, I think it no greater Wonder, than for a Deal-Board twelve Inches broad (which ſhould accidentally get edgewiſe between two Stakes, not above nine Inches diſtant one from the other) to float edgeling, as long as 'tis intangled between them. Nay, on the contrary, I think it morally impoſſible for any Body, that is much broader than 'tis thick, if it caſually gets edgewiſe between two Stakes, whoſe Diſtance will not let it lie flat, but it muſt continue more or leſs edgeling, 'till 'tis diſintangled.

I obſerve the Judge aſk'd this Gentleman, Whether Water in the Body would putrify it? He anſwer'd, *I ſay not; for in ſome Places they keep Fleſh-Meat from corrupting, by preſerving it in Water:* If he means Water in a deep Well will keep it a Day or two in hot Countries, I may admit it; but that it will keep it ſix Weeks, or more, I utterly deny it: if it will not keep Fleſh from Putrefaction forty-ſix Days, it hath little Analogy with the Caſe under Debate.

This Doctor tells you, *He muſt differ from him* (Mr. *Coatſworth*) *where he infers ſhe was murdered, becauſe he found no great Quantity of Water in her.* This is a Miſtake; for neither he, nor any of the other Doctors, or Surgeons, that were preſent at her Diſſection, inferr'd ſhe was murdered, becauſe ſhe had no great Quantity of Water in her; but becauſe ſhe had none at all in her.

Dr. *Morley* ſaith, That *theſe which ſeem to be the Queſtions of the greateſt Moment, are, Whether there was a Neceſſity for this Body (if drown'd) to have a great Quantity of Water in it? And whether Bodies thrown dead into the Water float? To the firſt I anſwer poſitively, That there is no abſolute Neceſſity that ſhe ſhould have a great Quantity of Water in her.* With Submiſſion, Doctor, pray tell which of your Oppoſites ſaid there was an abſolute Neceſſity for Mrs. *Stout* to have a great Quantity of Water in her; they ſaid, they could not conceive that ſhe was drown'd, that had not one Drop of Water in her. If you would have contradicted them, you ſhould have demonſtrated to the Jury, either by Reaſon or Experiments, how a Perſon might be drown'd without any Water in them: If you could have done this, you had anſwered the Queſtion of greateſt Moment.

This Doctor's Difference between Perſons drowned by Accident or Deſign, I would flatter myſelf, was rather a *Lapſus Linguæ*, than his real Judgment; for it is certain, with whatſoever Deſign a Man may go into the Water, before he is half dead he is deprived of his Senſes, and how he governs himſelf then, you may judge. To the ſecond Queſtion, he ſaith, *I think, if Bodies new killed float, 'tis by Accident:* It is as accidental for Bodies new killed, when thrown into Water, to ſink, as 'tis for Perſons juſt drown'd to ſwim.

Dr. *Woolaſton* being aſk'd his Opinion, *If a Perſon be drown'd, whether it can be diſcovered ſix Weeks after?* His Anſwer was, *I think it impoſſible to be known:* I am apt to be of his Opinion, that 'tis impoſſible preciſely to determine what, and how many Injuries her *Viſcera* had received, or what Accidents had happen'd unto them forty-ſix Days after any Perſon is drown'd; for naturally they would have been putrified in half that Time; and when the Bowels are reduced into a *putrilaginous Mucilage*, who can give a rational Judgment concerning their former Figure, Poſition, or how they had been affected? This is what naturally happens to a drown'd Perſon, but there was nothing of this in Mrs. *Stout*; which is no ſmall Argument with me, that ſhe was not drown'd. I ſhall take little Notice how he contradicts his Brothers, by his affirming, *That in drown'd Perſons the Water lies only in the Stomach and Guts.* As to his Experience, I doubt he is not candid; for I believe I have heard the ſame Story, which was thus: Two Men quarrelling in a Wherry, one of them took up the Stretcher, and knock'd the other down; in his falling, he accidentally caught hold of his Adverſary, and they both fell into the Water together; he that was knock'd down was not ſwell'd, but the other was exceedingly.

Mr. *Cowper* affirms, *That it is not reaſonable* (in Mrs. *Stout*, though drown'd) *to expect any thing but Froth.* What, will all the Water turn to Froth, that a dying Perſon receives before he is drown'd? 'Tis a Paradox to me: How contrary this Surgeon's Sentiments are to the univerſal Experience of the Learned and Unlearned Part of Mankind, let the unbiaſs'd judge. If he had conſulted *Ambroſe Parey*, and had thought him a reaſonable Man, doubtleſs he would have been of another Opinion; who ſaith, *The Belly of him that was thrown in alive, will be ſwollen or puffed up by reaſon of the Water that is contained therein.*

The whole Streſs of this Gentleman's Arguments ſeems to depend on a ſuppoſed Difference that there is between Perſons that drown themſelves, and thoſe that are caſually ſuffocated by Water; whereas I am apt to think there is little more Difference, than between him who puts the Halter about his own Neck, and one that the Hangman forceth it on; there is a Parity of Cauſes, why the Effects in the ſame Species ſhould extremely differ, is more than my weak Intellect can comprehend: In both I conceive, that in leſs than a Minute, their rational Faculty is ſo egregiouſly diſtorted, that nothing is done regularly, or by its Dictates.

The Verity of his private Experiments I doubt, becauſe when he made a publick one, it infinitely contradicted his clandeſtine ones. There is a vaſt Difference in drowning a Creature in a Tub, and in a River; in ſinking him with a Weight tied to him, and permitting him to ſink by his own Gravity. I am not of Opinion, that 'tis ridiculous to expect Water in the Cavity of the *Thorax*, tho' the Lungs had not ſuffer'd an Impoſthumation, or the like, for Reaſons formerly aſſign'd.

Dr. *Crell* ſaith, He ſhall only *inſiſt upon what* Ambroſe Parey *relates in his Chapter of Renunciations—He tells us, That the certain Sign of a Man's being drown'd, is an Appearance of Froth about his Noſtrils and Mouth; which could not be, as he declares, if the Perſon had been ſtrangled, or otherwiſe killed before.* For the Confirmation, or Confutation, of theſe poſitive Aſſertions of this Learned Doctor, I ſhall give you the verbal Expreſſions of *Ambroſe Parey: Whoſoever*, ſaith he, *is found dead in the Waters, you ſhall know whether they were thrown into the Water alive or dead; for all the Belly of him that was thrown in alive will be ſwell'd and puffed up, by reaſon of the Water that is contained therein; certain clammy Excrements come out of his Mouth and Noſtrils.* In the foregoing Paragraph he gives you the Signs, whether one is hanged dead or alive; his formal Expreſſions are, *If he was hanged alive, there will be a Foam about his Mouth, and a foamy and filthy Matter hanging out of his Noſtrils.* Obſerve this Author, whereon he only inſiſts, ſaith, There is a Foam and filthy Matter about the Mouth and Noſtrils of them that are hang'd alive. Now whether Froth at the Mouth and Noſtrils, is a certain Sign of a Man's being drown'd, or whether it is not incident to Perſons that die of other Diſeaſes, any Phyſician can eaſily determine? If you will be pleaſed to read *Paulus Zachæus's Quæſtiones Medico-Legales*, on the ſame Subject, you may find that he agrees with *Ambroſe Parey*, That an Appearance of Foam about the Noſtrils and Mouth, is no certain Sign of Drowning. By ſuch poſitive Aſſertions of the Learned, how eaſily may the Ignorant be impoſed on? By this you may evidently ſee the Difference between a Witneſs on his Parole, as this Gentleman was, and one upon his Oath, as the King's were.

Mr. *Herriot* being aſked by Mr. *Cowper*, What Obſervations he had made concering this Matter? Anſwer'd, *When I was a Surgeon in the Fleet, I made it always my Obſervation, when we threw Men over-board, that were killed, ſome of them ſwam, and ſome ſunk.* Then being interrogated by the Judge, *When a Body is thrown over-board, doth it ſink or ſwim?* His Anſwer was, *I always obſerved that it did ſink.* What Incoherence is here! Firſt, *I made it always my Obſervation, when we threw Men over-board that were killed, ſome of them ſwam, and ſome ſunk:* And almoſt in the ſame Breath ſaith, *I always obſerved that it* (a dead Body thrown over-board) *did ſink.* I am apt to be of Mr. *Herriot*'s Mind, as to his firſt Aſſertion, That Men kill'd in a Fight being thrown over-board, ſome of them ſunk, others ſwam; thoſe whoſe Breaſt and Belly are no ways injured, float; but thoſe whoſe Breaſt and Belly are perforated, ſo that Water gets into their Cavities through the Wound, I doubt not but they will ſink.

Mr. *Bartlett* tells you, *He never ſaw any Body float, though he had been in ſeveral Engagements.* It is very probable, he kept himſelf all that Time in the Cock-pit, and it may be long after dreſſing the wounded Perſons. The fitteſt Perſons in this Caſe to give their Obſervation, are Officers and Seamen, who are always upon Deck, and often obliged to look out; and not Surgeons, who are all the Time of Engagements ſecured in the Hold of the Ship.

Mr. *Camlin* ſaith, *There never more and greater Signs of the Stagnation of Blood on the Body of this Child, than on the Body of Mrs.* Stout. But on what Parts theſe *more and greater Signs* were, whether on the Breaſt, Belly, &c. not one Word. The Mother of the Child aſſerts, there was not the leaſt Sign of any Stagnation of Blood on any part of her Child: She having lately had the Small-Pox, her Face where the Small-Pox had fluxed, was ſomewhat diſcoloured; but it was no more diſcoloured, after her Drowning, than it uſed to be (when ſhe was cold) before her Death; the Soil of the Water doth generally alter the Faces of People: So Mrs. *Stout* was not known by her Neighbours, till that was wiped off. The Settlements of Blood on Mrs. *Stout* were diſperſedly on her Ear, both ſides of her Neck, Breaſt, Arm; but on what Part of the Child's Body theſe *more and greater Signs of Stagnation* were, he doth not ſpecify; becauſe had he aſſigned any particular Place, there were ſeveral preſent that would have contradicted him. General Terms are the fitteſt Covers for Falſhood.

If this Gentlewoman was not drown'd, as the Doctors and Surgeons for the Priſoners ſeem to inſinuate, the *Query* then will be, How ſhe came to her End? With Submiſſion to better Judgments, I ſhall here offer my private Sentiments concerning it. I am induced to believe, ſhe was knock'd down with a Blow on her left Ear, from the large Settlement of Blood there, which, as Mrs. *Kimpſon* ſwears, was as much as her Hand could cover, and more: After ſhe was felled to the Ground by the Blow, it is probable, with the Gripe of a ſtrong hand, ſhe was throttled: From the Stagnation of Blood on both ſides of her Neck, under her Ears, which Mr. *John Dimſdale*, Jun. ſwears there was, and from the Settlement of Blood on her Breaſt, I am inclined to believe, That the Perſon that throttled her, to ſupport his Hand that he might gripe the ſtronger, reſted his Arm on her Breaſt, which occaſioned the Stagnation there.

The Circumſtances that induce me to think ſhe was not acceſſary to her own Death, are theſe following: Her being found without her Gown (which probably was torn in the Scuffle) and Nightrail: her Gown could not be found, though the River was diligently raked ſeveral times, 'till about a Week before the Trial, it was found hanging on a Stake, which the Miller had cleanſed from the Traſh that hung on it about half an Hour before, and he will depoſe that it was not there then: It was torn to Rags, without one of its Sleeves, ſome Parts of it were as rotten as Dirt, other firm; you might tear it (which was made of a Sort of *Norwich* Stuff) and the Lining (which was a ſilk Damaſk) with your Fingers, as I did: *Query*, Whether Stuff or Silk will naturally rot ſo ſoon under Water? Here is no News of her Nightrail yet. 2. From her floating; whereof I make no doubt, becauſe it is ſworn by ſeveral Witneſſes. 3. Becauſe her Belly was not ſwollen. 4. Becauſe no Water came out of her when lifted out of the River, nor purged out of her afterwards. 5. Becauſe her inward Parts were not putrified, though her outward, that had been injured, were; which I ſuppoſe was impoſſible they ſhould have continued ſo 46 Days after her Death, had there been any Water in them. 6. From the ſeveral diſtinct Settlings of Blood, which is unuſual in drown'd Perſons: If it had been occaſioned (as ſome may think) from a Blow, which ſhe received when ſhe threw herſelf in, I am ſubject to believe, that the Coldneſs of the Water, in the Month of *March*, would have hinder'd its Settlement in the cutaneous Parts of the Body, as it is generally obſerved to do; for what is more common than to dip a Linnen Rag, or a Piece of brown Paper, in cold Water, and apply to a bruiſed Part, to hinder the Blood from ſettling there? 7. From the

the continual Disturbance that Mrs. *Gurrey* was under, both in Mind and Body: Nevertheless, she would not discover it till she was almost frighted out of her Senses, by the Voice, as she thought, of Mrs. *Stout*, which uttered these Words, *Divulge, Conceal nothing*. 8. From what is sworn by the *Gurreys* against their Lodgers at the Trial, *viz. Mr.* Marson *was hot, and put by his Wig; I see his Head was wet——they came in about* 11 *and* 12 *o'Clock——she turn'd me off, but a Friend of mine will be even with her by this Time——Her Business was done——He would pass his Word, Mrs.* Sarah Stout's *Courting-Days were over——The Use-Money is paid To-night——You have Forty or Fifty Pounds for your Share——Asked him, Whether the Business was done?——And he answered, He believed it was; but if it was not done, it would be done To-night——Pull'd a Handful of Money out of his Pocket, and swore, he would spend it all for Joy the Business was done.* 9. From the Sentiments of the Grand Jury, who, after a nice Examination, were of an Opinion, that she was murdered; as were several of the Petty Jury, but by whom they did not know——

As to the Letters produced in Court, my Thoughts are, they are not of a legitimate, but of a spurious Production. 1. Because the Stile doth no way suit her Character. 2. Because her Mother doth affirm, The Letter shewn her in Court was of a smaller Character than ever she observed her Daughter to write; neither doth her Brother think them to be genuine. 3. Because there was no Mention made of these Letters, 'till the common Report of her being with Child (which had been industriously spread abroad by several, but by none more zealously than by a *Nominal Quaker*, her *Quondam Admirer)* was proved to be utterly false, by the Oath of several Doctors and Surgeons that had opened her Body. 4. Because Mr. *Marson* and Mr. *Archer*, on the Trial, sware (and several of the Coroner's Inquest were ready to swear) That Mr. *Cowper*, before the Coroner's Inquest, being on his Oath, deposed, *That Mrs.* Stout *was a modest Person; that he did not know of any Thing that was the Cause of it (viz.* her Death); *That he did not know any Person she was in Love with, but of one whose Name was* Marshall; *and Mr.* Marshall *told him, That he was always repulsed by her.* Whether this Oath is not diametrically opposite to his Pleadings on the Trial, you may determine. 5. Because they did not insist on these Letters, when Mr. *Jones* said, *Indeed they have produced some Letters without a Name; but if they insist upon any Thing against her Reputation, we must call our Witnesses.* If the Witnesses then present in Court (who were some of the most reputable in that Town) had been called, to speak to her Reputation, a great Deal of that Dirt, that is now cast upon her, would have been wiped off. I cannot but take Notice here how seemingly unwilling he was to expose the Weakness of this Gentlewoman, or to meddle with her Letters, had he not those innocent Gentlemen to defend; when before her Death he had shewn them to Mr. *Marshall*, a repulsed Lover, and his Brother, and after the Trial, the Printers, who at the Trial did not take them in Short-hand, were favoured with them to be exposed to the whole World.

What concerns her Melancholy, I am induced to believe, that she was no more than is incident to all People that are sickly, or much troubled with the Head-ach; from what her Maid swears, *That she was ill sometimes, and I imputed it* (Melancholy) *to her Illness; and I know no other Cause.* And Mrs. *Walker* doth assert, That Mr. *Cowper* told the Coroner's Inquest, That he did not observe her any ways melancholy; that he should not have taken Notice of it, had not such an Accident happened; only now he remembers, That she was not so free in Discourse at Dinner as sometimes she used to be; and that the Discourse then was chiefly between him and her Mother. Her Mother and Brother do affirm they never observed her melancholy, and all her intimate Companions do assert the same: It is much that none but this Gentleman's Sister, and two or three others, devoted to a Party, should observe any such Thing.

Mr. *Firmin*, his Wife, and several others that were in her Company, with Mr. *Taylor*, do affirm, that she did not say her Head-cloths would serve her Time, or any Thing like it, and that they esteemed his Discourse with her pure Banter; that she was in her Night-dress, and presently went Home and put on clean Linen: I am apt to think there are many Relations and Friends, biggotted to a Party, that will not bogle to tell a Lye, to save a Friend, or near Relation from——

The Afternoon before her Death, she was observed to stand to see the Judges make their Entrance, with her Friends, as brisk and airy as any there: About four Hours before her Death, as I am told, she was in Company with a Knight of that County, and several others, who observed her to be as merry and pleasant as any amongst them: At Nine at Night, she earnestly importuned a young Gentlewoman of that Town, to tarry and lie with her that Night, as she had formerly done several Times; which she refused then, for some particular Reasons. When Mrs. *Stout* perceived she would not tarry all Night, she invited her to Dinner next Day, and told her what she had provided, and that she should be glad of her Company; not intending to go out of Doors the next Day.

I am apt to think, that if she had been such a furious Lover, as is pretended, or had any Intention that Night to destroy herself, that she would not have fallen out with any body about the Payment of Money; much less have refused to sign a Receipt for six Pounds, which her D——ft had prepared when he paid her the Interest-Money; what was the true Cause why she refused to sign this Receipt, is a Riddle to most.

If she had had so great a Kindness for some Years for this *Joseph*, as is insinuated, certainly his Wife would have observed something of it; and then she would not be importuning her every Month, by her Letters, to come to *London*, that she might enjoy her sweet Company: Neither would she, in all Probability, (if she had been so desperately in Love with him) have lived here several Months together, without his Company, even when importuned by his Wife; but would, as we may reasonably conjecture, have resided in your City, where she might the oftener, and more privately have enjoyed his Company: And, as for her going out at the Window, it is morally impossible, the Bars being so close together, that a Child of a Year old cannot get out between them; neither was there any Occasion for it, the Keys being always left in the Doors.

Because there is no Mention made on the Trial, of the missing of any of her Money; several are apt to report that her Relations want none of it, which is a grand Mistake; for they want, as they compute it, at least a Thousand Pounds of her original Fortune, besides the Improvements she had made thereon, which were considerable; they made little Mention of it there (that was taken Notice of), because their Evidences that could speak materially to that Point, where Quakers, whose Affirmation will not be taken in Criminal Cases.

The last Assizes, here was a Man hanged; after he was dead, was cut down, and buried without a Coffin, the Grave filled up, and the Earth well trod down; in the Evening he was digged up again, being pressed almost flat by the Weight of the Earth, was privately cast into the River, and when it was observed that the Corps would sink, it was exposed to publick View, and an Advertisement of it was printed in the *Post-Man*, the 25th of *July* last, with a great shew of Exultation, by their saying, *Many hundreds having seen this Experiment with their own Eyes, the Opinions of the Surgeons produced on the Part of the King is thereby destroyed and exploded, and all Persons convinced if the contrary:* What Influence this Experiment may have on you, I know not; but when all the Circumstances attending it are duly considered, I am of Opinion, it will make more against them, than their Opposites: If they had been certain of Success, what Need of so much Art? Why did they not insert in their Advertisement, how the Body had been managed before 'twas thrown into the Water, how they opened it afterwards, and how they made a strict Scrutiny after Water, yet could not find a Drop in it? Not one Word of this. Methinks this partial Relation is calculated on purpose to magnify their own Evidences, and put a Slur on the King's.

I doubt not but the ingenious Contrivers of this Experiment did not only expect it would sink, but that it would have some Water in it also. I am apt to think it reasonable, to expect that the Weight of the Earth would have driven out the Wind contained in the Cavity of the Breast through the Wind-pipe, which is impossible to be done without lifting up of the *Epiglottis*, which continually closes the Mouth of the *Aspera Arteria*; but in Expiration, this being once forcibly removed out of its natural Situation, 'twas very likely that it would not cover it again so nicely, but that some small Quantity of Water might insinuate itself through the small Passages, which the violent forcing out of the Air had made: If this had succeeded, what a Triumph there would have been, you may easily determine.

Some Weeks since, a Surgeon, that had been an Evidence at the Trial at *Hertford*, going into a Bookseller's Shop, meeting some Acquaintance there, he fell into Discourse about Mrs. *Stout*, and asserted there, what he had affirmed at the Trial, *viz. That two or three Ounces of Water will drown a Dog:* One of the Company told him, He *could not conceive that so small a Quantity would do the Business:* He replied, *Sir, I will lay a Guinea, that I will drown a Dog in the River of* Thames, *and he shall not have above three Ounces of Water in him.* The Proffer was no sooner made than accepted, Time appointed, Dog brought, and with a Weight tied to his hinder Feet, flung into the River: some Time after, he was taken out, and dissected; where instead of three Ounces, there was about thirty-three; whereby he not only lost his Wager, but, in a great Measure, his Reputation, as to what he had so confidently asserted to the contrary on the Trial.

Having, in some Measure, answered your Commands, though by it, I have, I am afraid, a little too much trespassed on your Patience, I shall take little Notice now, what Omissions and Alterations there are in the printed Trial; how Mr. *Stevens* was taken with a strange Sort of a Fit, (just after the Petty Jury went out) which disturbed the whole Court: Or how a Wine-Cooper in *Southwark* (who came down as an Evidence for the Prisoners) fell into a Sort of Distraction; and all the Time of the Trial was mightily discomposed in his Mind, so that he was fain to be tied in Bed, yet would often ask how the Trial went, and whether they were like to be cleared; and would often tell the People about him, that he had done a very bad Thing, but would not confess what, though often urged to it: But shall conclude, desiring that the Authors of this horrid Murder may be detected and brought to condign Punishment; but that the Innocent may be cleared from all Aspersions thrown undeservedly on them, which I doubt not, but that the Great *Jehovah*, in his own Time, will bring to pass: And that it may be so, shall be the daily Prayers of,

Sir, your humble Servant,

Hertford, the 5th of September, 1699.

P. D.

POSTSCRIPT.

I Doubt not but you have heard, that the Gentlemen that opened Mrs. *Sarah Stout*'s Body, did depose, that she was a Virgin; for your Information, I will give you a true Copy of their Certificate, which is as followeth.

Hertford, April 28, 1699.

WE whose Names are here under-written, having examined the Body of Mrs. Sarah Stout, *deceased, do find the Uterus perfectly free and empty, and of the natural Figure and Magnitude, as usually in Virgins. We found no Water in the Stomach, Intestines, Abdomen, Lungs, or Cavity of the* Thorax.

John Dimsdale, Sen. — *William Coatsworth,*
Robert Dimsdale, — *Samuel Camlin,*
John Dimsdale, Jun. — *Daniel Phillips.*

After this Certificate was delivered to the Relations, they desired the Gentlemen that had signed it, to give their Opinions, whether they thought she was drowned or no? All of them were unanimous that she was not drowned, except Mr. *Camlin*, who was unwilling to give his Opinion, either *pro* or *con*; but when asked, would only say, *There were very odd Circumstances:* Yet, at last, when he was asked, Whether he did conceive any Person could be drowned, that had no Water in their Stomach, Intestines, Abdomen, Lungs, or Cavity of the Thorax? He replied, *No*; which the others thought virtually to include as much as they had said.

A REPLY

A REPLY to the Hertford *Letter: Wherein the Caſe of Mrs.* STOUT'S *Death is more particularly conſidered; and Mr.* Cowper *vindicated from the ſlanderous Accuſation of being acceſſary to the ſame.*

SIR,

I Received your Letter from my Bookſeller, on the 20th of *September* laſt: And though I am far from thinking your Sentiments upon this Matter were either deſired or commanded; yet am I well enough pleaſed with your Apology, wherein you tell us, you are very ſenſible of your own Weakneſs, and how unfit you are to enter into a Controverſy, *&c.*

This, I muſt confeſs, may be of ſome Uſe to the Ignorant, by foreſtalling their Expectation of any wonderful Diſcovery; but for the Learned, the Compliment might have been ſpared, ſince the Performance does ſo evidently diſcover what you acknowledge.

The Introduction does indeed promiſe us great Matters, *viz.*

I ſhall give you my Thoughts concerning the natural Cauſe of Drowning; Floating of dead Bodies afterwards; the various Sentiments of the Doctors; the Manner of her Death; the Letters produced in Court; her Melancholineſs; why no Mention was made of the Money; and laſtly, concerning Two publick Experiments, &c.

But pray, Sir, if we find your Thoughts ariſe from the Ebullition of a heated Fancy, and that your too eager Zeal for your Friend has carried you oftentimes to over-haſty Concluſions; if, inſtead of a well-grounded and rational Solution of theſe Phænomena, we are only entertained with incoherent Expreſſions, falſe Grammar, Tautology, groundleſs Surmiſes, and want of Proof; in a word, if theſe pregnant Thoughts of yours are found to be mere Trifles, had it not been better yourſelf alone had been ſtill Maſter of them? Or, if there was a Neceſſity for their breaking out, had you not better have communicated them only to your Friend in *London*, than to have expoſed yourſelf thus ridiculouſly to the Learned World?

That I may make good what I have alledged, I ſhall now proceed to your Letter.

Hertford Letter, *ante* Pag. 490. *It is a common Obſervation of moſt People, not uſed to dive,* &c.

Give me, Leave, Sir, here, only to queſtion the Truth of your Propoſition, Whether or no, the greater Number of thoſe who are not Divers, have made any Obſervations upon Drowning, or from their own Experience can ſatisfy us of the Conſternation that enſues plunging themſelves into the Water? But admit the Confuſion (as without Doubt it is) to be very great; it may not hence follow, that the very firſt Moment of Submerſion Reaſon muſt be loſt; or, in your own Words, that *there is a moral Impoſſibility to regulate their Actions by the Dictates of Reaſon.*

As to the laying hold of any thing in their Way, 'tis what equally happens in the Fall from a Houſe, and ſeems not ſo much to argue a total Eclipſe of the rational Faculty, as a Want of Time to deliberate: For the Action of Falling being inſtantaneous, 'tis impoſſible to form a ſettled Act of Judgment.

We all know the Proſpect of ſudden Death, by what way ſoever, impreſſes a certain Horror, (which I muſt yet think is not ſo great to one who wilfully deſtroys himſelf, as to him who either by Accident or Conſtraint is put upon it) but that it leaves us immediately deſtitute of Choice, or a Power to refuſe, both which are Acts of Free Will, and import Reaſon, I can't allow; as conceiving, if it were ſo, he that wilfully throws himſelf from a Houſe, and he that falls accidentally, would both equally lay hold of any thing that might ſave their Fall.

Pag. ibid. *In this Confuſion* (you ſay) *it is no ways ſurpriſing, that Water, wherein they are immerſed, ſhould inſinuate itſelf into ſome Vacuities no ways adapted for its Reception.*

On the contrary, I muſt alledge, That whether in or out of this Confuſion, it is not only very ſurpriſing, but abſolutely impoſſible, that Water ſhould inſinuate (though never ſo cunning), or enter into any Cavity, which is at the ſame Time no ways fitted, or (if you had rather) adapted to its Entrance.

I will not ſtand to comment on your Notion of *Suction*; I thought ſuch Kind of Notion had been long ſince exploded: For my own Part, inſtead of believing that the Lungs do ſuck in the Air, I think it more rational to conceive, that as by Pulſion they are emptied, ſo by the Weight of the Air, from the Preſſure of the Atmoſphere, they are preſently filled again. Be this, however, as it will, I cannot grant you that every Man under Water ſwallows down the ſame into the Gullet whilſt his Senſes continue: For I doubt not but that he who deſignedly drowns himſelf, may chooſe to let it into the Windpipe, that he may thereby the ſooner be choaked.

The ſwallowing of Air or Water down the Windpipe, is a Term I do not readily apprehend; I take Deglutition, or Swallowing, which is the ſole Office of the Gullet, and Reſpiration, or Breathing, which only appertains to the Windpipe, to be two different Actions, and diverſly effected. Whoever ſwallows any thing, either in or out of the Water, muſt, by opening the *Sphincter* of the *Gula*, let it into the Stomach: And whilſt a Perſon under Water continues ſwallowing, there may be no great Danger attending him of being drowned; it being very probable that during this Action no Water gets into the Lungs; but being unable to hold out for Want of Breath, he muſt neceſſarily make an Attempt to reſpire; when ceaſing to ſwallow, the *Epiglot* riſeth, and the Water ſpontaneouſly (if you will allow me the Expreſſion) ruſheth on the Lungs: So that when a Perſon is totally ſubmerſed, provided he ſwallows not at all, or cannot ſwallow longer, 'tis not only not improbable, but I believe certain, that in his Attempt to reſpire, a far greater Quantity of Water than Air (perhaps nothing but Water) will get into the Lungs.

In every Expulſion of Air out of the Lungs, the Epiglottis (you ſay) *is lifted up.* And is it not ſo, I would be informed, in every Impulſion of the Air into them?

'Tis my Opinion, that this Part does never exactly cloſe upon the *Larynx*, but upon Deglutition: And although by your Account it may be thought to be raiſed up like a Trap-Door, and preſently ſhut down again; I do find it a Sort of ſpringy Body, and is, I doubt not, at all Times ſomewhat elevated from the *Glottis*, unleſs, as I ſaid before, at the Time of ſwallowing; when by the Weight of the Aliments, whether liquid or ſolid, ſome peculiar Muſcles aſſiſting, it is forced down: And after this Action is over, by its own proper Elaſticity, it raiſeth itſelf again, that the ſucceſſive Motions of Inſpiration and Expiration may be orderly carried on.

When once there is any conſiderable Quantity of Water got into the Windpipe, I imagine this mighty Struggle of Nature doth not long continue; and therefore cannot chooſe but wonder to hear you to ſay, *By this Struggle of Nature the Epiglot is lifted up,* &c.

It ſeems, in my Opinion, very natural; the Cover to the Windpipe being a ſpringy Body, and for the moſt Part inclining to an horizontal Poſition: This, I ſay, conſidered, if the Mouth be full, and the Perſon almoſt ſpent, or though he can, yet if he will not ſwallow, the Nature of all Fluids is ſuch, that they will run into any Declivity; unleſs (as upon another Account you have it) they are ſhut out, or that the Vacuity is no ways adapted to let them in.

Pag. 491. *As ſoon as the Senſes are gone* (you ſay) *the Epiglottis is kept open by the Force of the Stream.* To which I reply, That the natural Poſture of the *Epiglot* being ſuch as I have deſcribed it, we might rather think the Force of the Stream ſhould clap it down, than keep it open; unleſs by the Force of the Stream, you mean ſomewhat like that of an Injection through a large *Syphon*, whereby the ſaid Trap-Door may be beat within the *Rimulæ* of the *Larynx*; but in ſtagnant Waters the Force of the Stream will be inconſiderable.

As long as the Senſes continue, they (I ſuppoſe you mean Perſons under Water) *ſwallow moſt of the Water which comes into their Mouths, into their Stomachs.* And the reſt, you tell us elſewhere, they ſwallow into their Windpipes. But this I deny; for as long as the Senſes continue, and they can hold their Breath, they very often ſwallow none: And after this, in the Caſe of voluntary Drowning (which you may ſmile at as long as you pleaſe), 'tis more likely by far that they admit it into their Lungs; ſince by ſwallowing never ſo much, they do not deſtroy themſelves; but by letting a ſmall Quantity into the Lungs, they preſently put a Period to their miſerable Lives.

But when they are near ſuffocated (you ſay), *the Water runs into thoſe Ducts where it meets with the leaſt Reſiſtance.*

I would, methinks, be informed what you mean by thoſe Ducts. The Noſe and Ears, I preſume, are full before they are near ſuffocated: And if the *Sphincter Gulæ* does oppoſe its Entrance into the Ventricle, what other Duct remains, unleſs that of the Windpipe? Out of which too, after Suffocation, 'tis not impoſſible but it may be kept, by the Contiguity of the Tongue's Baſis to the Palate.

So long as Life continues (you tell us, p. ibid.), *there is a convulſive Struggling of Nature, to expel out of the Lungs all thoſe Things that are noxious to them, eſpecially Water,* &c.

Let me tell you, Sir, I am apt to think this eſpecially will be found a great Miſtake; for I doubt not but any thing of a more uneven Texture, ſlipping into the Lungs, will excite much ſtronger Convulſions than thoſe from Water: But indeed, according to ſome Experiments lately made, I could not perceive the Marks of thoſe violent Convulſions you here ſpeak of.

I took a Dog, and by a Weight directly ſunk him under three Foot of Water, which was ſo clear that I could perceive what happened to him: And, to be plain with you, I obſerved that for almoſt a Minute he threw his Head diſorderly about before he gaped; upon which the Water getting into his Windpipe, in half a Minute more he fell down with his Neck to the Bottom, void of Senſe and Motion.

After this I plunged another ſomewhat leſs; when, in like Manner as the former, I found when he had turned his Neck two or three Times about, he was to Appearance dead in a Minute's Time.

Now in all this there were none of thoſe violent Efforts, to throw the Water out of the Lungs, diſcernible; or did I think it at all rational to expect the ſame forced into the Cavities of the *Thorax*, either by dilating the Pores of the thin Membrane that inveſts the Lungs, as Quickſilver is forced by the Preſſure of a Hand through a Piece of Leather; or by a Rupture of their Tunicle, or by ſome minute Veſſels not yet deſcribed by Anatomiſts: And the Reaſon of my thinking ſo is this, Becauſe I could perceive little more to effect it, but the ſpecifick Gravity of the Water; which, according to the Laws of the Libration of Liquors, I take to be inconſiderable.

I know of no Phyſician that boaſts of a *Ne plus ultra* in Anatomy; nor ſhould I expect any ſuch Pretenſion from a Phyſician, ſo ſoon as from the Anatomiſt: Theſe two, you know, are not always inſeparable Companions. But as to your Inſtance about the *Empyema*, though I think it fooliſh to deny Facts, when I am unable to account for the Manner how they are brought about; yet I ſee nothing to hinder me from believing, that very often, where the Matter you ſpeak of is caſt forth by Excretion, the Lungs have ſuffered a Solution in their Continuity. In two Perſons I have inſpected, who died under theſe Circumſtances, it was apparent; in both of which, as I ſuppoſe from a preceding *Peripneumony*, there had been Abſceſſes formed in the Lobes of the Lungs, which had rotted their outward Membrane; ſo that whether the purulent Matter, which was coughed up, came from the ſaid Abſceſs, or whether ſome of that which fluctuated on the Diaphragm, might not alſo be imbibed by the ulcerated Lung, was very uncertain.

The Injection of bitter Liquors affecting the Throat, if they are caſt into a *Fiſtula* which took its Riſe from an internal Apoſtem; or otherwiſe, if the Penetration has been of long Continuance, and diſcharged great Quantities of fœtid, ichorous, or corroſive Matter; I ſhould leſs wonder the Experiment ſhould anſwer: For in theſe Caſes the Tone of the *Viſcera* is very much weakened, the Patient very frequently dies tabid, and we find upon Diſſection, that very commonly the Lungs are corrupted. It may happen alſo in a recent Puncture; but then we may be likewiſe ſometimes uncertain, whether the Membrane of the Lungs received no Damage.

I deſire not that greater Streſs ſhould be laid upon theſe Caſes than they will readily bear: But this I muſt aver, That in Penetrations of the Cheſt it does not always happen; for in a Puncture I have ſeen injected, and a *Fiſtula* of this Part, into which I have caſt at times ſeveral

Ounces

Ounces of a bitter Decoction, with a Tincture of Myrrh and Aloes; during which, I can ſafely ſay, I never heard any ſuch Complaint, though I have purpoſely enquired.

Your Citation of Mr. *Boyle*'s Citation from *Wallæus*, if Matter of Fact, might be preternatural: And as to his finding the ſame divers Times, how diligent ſoever he might be, rather than ſhew myſelf uncivil to him, by ſaying 'tis falſe, I ſhall turn Sceptick, and ſuſpend my aſſent till I am better ſatisfied: At preſent I cannot ſee, if there was an Admiſſion of Air, through Pores much ſmaller than thoſe made by the longer Sort of Peas, into the Cavity of the Cheſt, how Reſpiration could be carried on: And I muſt needs think, that Dr. *Garth*'s Remark upon the Trial is very pertinent; where he tells us, *There is a great Providence in ſuch a Texture; for if* (ſaith he) *there were any large Pores in this Membrane, the Air would paſs through into the Cavity of the* Thorax, *and prevent the Dilatation of the Lungs, and conſequently there would be an End of Breathing.*

But that I might put this Matter yet farther out of Controverſy, being willing to be made ſenſible of the utmoſt Efforts of a drowning Creature, and the Reſult of the moſt violent Strugglings it could make to ſave itſelf; I ſent for a Dog, and leſt you ſhould find Fault had I made uſe of a Tub, I procured the Uſe of a Diſtiller's Back, which, if I may call it ſo, is a Sort of Trough, containing in Dimenſion thirty Foot of Length, and half as much of Breadth: Into this, when filled with Water, I cauſed the Animal to be caſt, having before ordered his Fore-Feet to be tied together.

By the Force of the Fall he was plunged over Head and Ears, but riſing up again, made to the Side as well as he could; and though ſeveral Times repulſed, continued ſtruggling, and by the Liberty of his Hind-Feet often raiſed his Head above the Water: Upon which, ſeeing no Likelihood of his being drowned under a very long Time, I ordered him to be taken out, and his Hind-Feet alſo to be faſtened together. Thus he was a ſecond Time thrown in, and continued ſtruggling, ſometimes under and ſometimes above Water, with his Head and Neck; in a Quarter of an Hour's Time his Navel ſtarted, and ſoon after there was a viſible *Prolaps* of the *Inteſtinum Rectum:* Having thus between while had the Liberty of an imperfect Reſpiration, it was half an Hour before he had done ſtruggling; after which, under Water he gaped ſeveral Times. When dead, I left him, and returned five Hours after; at which Time I deſired he might be taken out with his Head erected, that we might loſe no Water.

I think, if it had been poſſible, I had Reaſon in this Caſe to expect Water in the two Cavities, *i. e.* the *Thorax* and the *Abdomen*, which ſeemed much tumefied; but was ſo far from it, that upon the opening the *Peritonæum*, inſtead of an Inundation, I found not a Drop of Water; and even the ſmall *Inteſtines* had received very little, if any at all from the *Pylorus*. What was contained in the Stomach was much ſhort of half a Pint, or little more than four or five Ounces. Having raiſed the *Sternon*, we perceived the *Thorax*, in like Manner as the *Abdomen*, perfectly clear of Water. Out of the Windpipe there iſſued a ſpumous Matter, and the whole of what we preſſed from its *Ramifications* was about three Ounces.

Thus, Sir, have I given you a faithful Hiſtory of the Fact; but if you think the Experiment was made clandeſtinely, or that the Dog was half ſtrangled before thrown into the Water, as you pitifully inſinuate about Mr. *Cowper*'s Experiments, for your farther Satisfaction, you may be informed of Mr. *Harriſon* without *Biſhopſgate*, of *Thomas Serjeant*, Eſq. Gentleman Porter to the *Tower* of *London*, Mr. *John Litchfield*, Surgeon, with ſundry other Perſons, as honeſt and judicious. But to proceed;

Ante Page 491. *Water is as frequently found in the Cavity of the* Abdomen *as the* Thorax.

It may be ſo; but if the Stomach, Guts, *&c.* in the former, and the Lungs in the latter, continue firm and ſound, (as is reported they were in Mrs. *Stout*) I cannot ſee how it ſhould happen to be found in either. I muſt confeſs, I have never ſeen it, nor was there any thing like it in my late Experiment. If the *Viſcera* are putrid, I ſhould not wonder at it; but if otherwiſe, I ſhould be thankful to your microſcoptick Anatomiſt to ſhew me how or which way it ſhould enter.

As ſoon as the Lungs, Stomach, &c. *are full of Water, the Body naturally ſinks.* Page ibid.

I ſuppoſe the *&c.* includes the *Thorax* and *Abdomen*, as well as the Guts; but though the Lungs, Stomach, and the *&c.* are full of Water, in the Senſe of Fulneſs here meant, I deny that the Body will always ſink, as having ſeen the contrary, and can bring Proof of the ſame.

Page ibid. *It is obſervable* (you ſay) *that human Bodies after Death admit no Water; becauſe as ſoon as Death ſeizes a Man, the Sphincter Muſcles in all Parts do naturally contract themſelves.*

How it is in human Bodies I cannot ſay, having made no Experiment of that Kind; but that it is always ſo in other Animals, I deny; and indeed can ſee no Reaſon why it ſhould not be admitted for a parallel Caſe: For though you ſay, the Sphincter Muſcles do contract themſelves, yet the Epiglot ſtands open; ſo that unleſs the Tongue and Palate, by their Contiguity, or ſome ſpumous Matter already in the Windpipe, intercept its Paſſage; what hinders, in a ſupine Poſition of the Body, but that ſome ſmall Quantity of Water may ſlip within the *Rimulæ?* But whether or no the Sphincters do always naturally contract themſelves before Death, may be diſputed; for they ſometimes labour at that Time with ſuch a *Paralyſis*, as occaſions a Reſolution of their nervous Fibres, and forces them involuntarily to let go their Contents: Thus nothing is more common than for dying Animals, whether rational or irrational (if ſoon before they did not exonerate) to let fall their Urine and inteſtinal *Fæces*.

That I might inform myſelf whether the Water would get into a dead Body, I cauſed a Dog to be ſuffocated over the Fumes of a ſpirituous Liquor, prepared for Diſtillation, in the Time of its Fermentation; and though his Noſe was held ſome little Diſtance from the Surface, yet it ſtifled him to Death in two or three Minutes Time; after this he was thrown into the Water, and ſunk preſently to the Bottom, where he lay ſeveral Hours. Being carefully taken out, I opened his Throat, and found the Epiglot (as is always uſual) raiſed from the Windpipe, which inclining downwards, there was diſcharged about three Spoonfuls of fair Water.

Page 491. The immediate floating of human Bodies, thrown dead into the Water, I believe to be very uncertain: and whoever goes about to eſtabliſh it for an infallible Hypotheſis, I muſt needs think very raſh, if not guilty of a downright Folly: For, though your Seamen ſhould tell me a thouſand idle Stories, I know there are ſo many Cauſes that may alter the Caſe, that it would be very ridiculous to credit ſo bold an Aſſertion. I cannot ſay, I have as yet tried the Experiment on a human Body, but of thoſe other Animals (both alive and dead when thrown into the Water) which I have made uſe of, there was but one which floated, and that I thought moſt likely to be found at the Bottom, as having received moſt Water into the Lungs and Stomach. If the dead Body of an aſcitical Perſon ſhould not ſink, it might ſeem ſtrange: On the other Hand, if that of a purely tympanitical ſhould not float, it would be equally a Wonder.

Page 492. *If the Perſon died in the very Act of Inſpiration, the Lungs* (you ſay) *will be full of Air,* &c.

Here, Sir, you muſt give me Leave to think you very much out of the Way; for unleſs in the Caſe of ſome very ſudden and violent Death, I am apt to believe all Perſons finiſh their Lives in the Act of Expiration; and even in the moſt ſudden, ſetting aſide that of ſtrangling by a Ligature, where the Air is forcibly included, and its Paſſage from the Windpipe intercepted, I make it a Queſtion, whether the laſt Motion of the Lungs is not that of its Syſtole or Contraction: For although to outward Appearance, a Man or other Creature may be thought to die inſpiring, and ſeem perfectly devoid of Senſe and Motion; yet by laying any poliſhed or diaphanous Body to the Mouth and Noſtrils, there is oftentimes a Damp contracted on the ſame; which is nothing but the Air inſenſibly proceeding out of the Lungs, and condenſed on the Surface of the ſaid Body.

'Tis this general Opinion that hath given Riſe to that very common Expreſſion, when he would ſignify the Death of a Friend, by ſaying, *He is expired*, or *hath breathed out his laſt*. But admit the Aſſertion good, of dying in the Act of Inſpiration, it will not follow that any dying Perſon can take a tenth Part of the Air he did in perfect Health; and ſo conſequently cannot fill his Lungs with Air: For, not to inſtance in aſthmatick Perſons, who at all Times take but little Air, by reaſon of the Obſtructions of the *Bronchia*; and are therefore forced upon quick Breathing; it is very rational to believe, that immediately before Death the conſtrictive Fibres are much weakened, the Blood begins to ſtagnize in all Parts, and being carried by the *Arteria venoſa* into the Lungs faſter than thrown off by the *Vena arterioſa* into the left Ventricle of the Heart, a great Part of the pulmonary Cells are ſo ſtuffed that they can admit but little Air: So that the Quantity of what we take in perfect Health, and that which we receive dying, is vaſtly diſproportionate.

By filling the *Thorax* with the ſame Air forced into the Windpipe, unleſs you mean filling the Lungs in the *Thorax*, it ſeems of Kin to the Jargon of filling the *Thorax* with Water out of the Lungs. For my Part, I have ſeveral Times, through a Tube, blowed with as great Force as I could into the Lobes of the Lungs, and cauſed at the ſame time a lighted Candle to be held nigh their Extremities, and round about them; I never could perceive the leaſt Motion of the Flame, whereby I might conjecture the Air had any Vent: So that I muſt think it impoſſible that either Air or Water, whilſt their Texture continues firm, can inſinuate itſelf into the Cavity of the *Thorax*; till you can bring me ſome of the diligent *Wallæus*'s Gentlemen, that have Pores in the inveſting Membrane of their Lungs as big as the longer Sort of Peas.

Page ib. I think it very likely, that a dead Body will be more buoyant in ſalt than in freſh Water: But your Experiment I take to be inconcluſive; for unleſs you had ſaid that a Ship will ſink ſome Inches lower in a Sea of freſh Water than in one of Salt, your Adverſary may object, that the Reaſon of the lower ſinking in the *Thames*, may perhaps be as much owing to the Want of Depth, as Salt.

The Diſcordance of the Phyſicians is beſt perceived by reading over the Trial: Some Part of the Diſagreement, as I remember, did conſiſt in this, That whereas on the King's Part, it was affirmed, the Lungs of Mrs. *Stout* were firm and ſound, and not the leaſt Appearance of Water in the *Thorax*; for the Priſoner, Mr. *Cowper*, it was replied, That if the inveſting Membrane of the Lungs was ſound, it was ridiculous to expect Water in the Cheſt, their Encloſure.

Again; For the King, it was thought impoſſible that any Perſon thrown alive into the Water, ſhould be drowned without ſwallowing or taking in a great Quantity of the ſame into the Stomach, and other Cavities; whereas, for the Priſoner, it was thought very poſſible two or three Ounces might be ſufficient to drown any ſubmerſed Perſon. And this leads me to a Paſſage in the laſt cited Page; where I find you much concerned, that Mr. *Cowper*'s Phyſicians ſhould ſtrenuouſly urge, that ſo ſmall a Quantity of Water was ſufficient for this Purpoſe: Which you ſay they grounded on a private Experiment on a Dog half-hanged, you being apt to think that there was Artifice in the Caſe; and indeed ſo ſhould I, if I were ſure they had half-hanged him: But if your were told ſo in your Sleep, it may happen to be falſe; or if not, I think you are but little obliged to any Perſon, who was ſo officious as to tell you an Untruth. However, that you may not be told of any Artifice made uſe of in my Experiments, I ſhall refer you to the aforeſaid Mr. *Serjeant*: He is a Gentleman very curious in theſe Enquiries, a Man of unqueſtionable Probity, and very well known in our City of *London*.

In his Preſence, with divers others, I cauſed a Dog, who had been kept faſting almoſt twenty-four Hours, to be plunged under Water, without ſuffering him to riſe: When he had been dead ſome time, I took him with his Head erected, that we might not loſe a Drop of Water he had taken in. Having made a Ligature on the *Gula*, I turned down the *Larynx*, and with a moderate Preſſure there was diſcharged of Water, mixed with a Spume or Froth, about four large Spoonfuls.

After this I came to the Stomach, which I perceived to be very lank and flaccid; when cutting into it, there was not a Drop of Water to

be found, nor indeed the leaſt Remains of the chylous Juice, which had been before carried off through his long Faſting; ſo that the Wrinkles of the inward Membrane were very conſpicuous.

Soon after I drowned another before the ſame Company, and do aſſure you have all imaginable Reaſon to perſuade myſelf, that all the Water he had received was let into the Lungs, which did not exceed two Ounces and an half: But in this latter (having, unknown to us, been fed a little before) the Stomach was half full of indigeſted Aliments; yet no Appearance of Water, which in drowning we could ſuppoſe he had gulped down.

I come now to your Pleaſantry with Dr. *Sloane*, who it ſeems was ſo unhappy as to tell the Judge, That Caſes of that kind were very uncommon; and leſt ſome ignorant Perſon ſhould be to ſeek for the Meaning of the Words, here is a Parentheſis clapped in, to tell us, that by *Caſes of this kind* is meant *(for Mrs.* Stout *to be drowned without any Water in her)*. Vide *P.* 492.

I thank you, Sir, for your Information; till now I did not think the Doctor's Words were ſo myſterious, but harmleſly gave them a quite different Conſtruction, which, before you were pleaſed to be ſo witty with them, I thought very natural; and having ſince aſked others, they tell me the Doctor means the Caſes of drowned Bodies remarked upon, eſpecially when they have been laid ſix Weeks under Ground, and afterwards inſpected to find Water. Now, Sir, if, ſince the Creation of Man or Woman either, you have heard of ſuch a Caſe before, or if, in the Multiplicity of your Practice, you have met with any Thing like it, I think 'tis great Injuſtice that you have ſo long concealed it.

I would gladly know preciſely what you mean by Drowning. You think that no Perſon can properly be ſaid to be drowned, who hath not ſwallowed *(*I ſhould rather like *received*, or *let in*; becauſe Swallowing, as I have already told you, is proper to the Gullet*)* above two or three Ounces of Water: And, I think, that if under Water thoſe two or three Ounces do effect his Deſtruction, he is as truly ſaid to be drowned, as if he had taken in two or three Gallons.

If Reſpiration could by any Contrivance be ſecured to a Perſon under Water, he would then be in no Danger of Drowning. Again; Set him up to the Chin, and, if it were poſſible, let him ſwallow a Tun; though it may be otherwiſe miſchievous, it will not drown him: For if, as may be inferred from your Opinion, Drowning muſt be meaſured by a great Quantity of Liquor ſwallowed into the Stomach, we have Abundance of thoſe drowned Perſons, ſome of them top-full, daily reeling about our Streets in *London*, and I believe you have ſome few of them in your Town of *Hertford:* Hitherto we have called them drunken Perſons; and you will find it a very difficult Matter to perſuade them that they are properly or truly drowned.

Since then it is not the greater Quantity ſwallowed into the Stomach, but the leſſer taken into the Lungs, that kills the Creature; and ſince there's no ſuch Thing at all as Drowning, but by that ſmaller Quantity entering the ſaid Part; I reckon that if a Man dies under Water, without the Diſtinction of more or leſs Water taken in, he is as much and as really drowned as any Thing can be. I know the Word is ſomewhat ambiguous, and Cuſtom has applied it differently; for if a Perſon upon Land, by Liquor accidentally ruſhing on the Lungs, or, as it is called, going the wrong Way, receives his Death; this, I ſay, is named Suffocation: But if the ſame Thing betides him under Water, we uſually call it Drowning; though the latter is as much ſuffocated as the former. But I have already been too long on this Matter, and ſhall therefore proceed.

Page ib. I hope by this Time you are no great Stranger to the Meaning of that general Queſtion you take Notice of, about Water in the *Thorax*; if being ſenſible of the Blunder, they had ingenuouſly quitted it, I believe it had been much better; but whether or no their perſiſting in it has been any Advantage to them, the learned World muſt judge.

I cannot think the inveſting Membrane of the Lungs ſo eaſily torn in Coughing; if it ſhould, there may an Ulcer of the Lungs enſue; for the Solution would not preſently, if at all, be re-united. But what of this, or what would you infer? I cannot perſuade myſelf there is any Coughing under Water that ſhould break their Continuity.

I find the Doctor is not yet got out of your Clutches: He brings us, poor Gentleman, ſo many *If's* and *And's*, that his Sentences happen to prove unintelligible; for where he tells us, that if there was a great Fermentation, a great deal of the Water would riſe up in Vapours and Steams, and go off that Way; we are at a Loſs, it ſeemeth, what Way he means.

Page ibid. *I cannot imagine* (ſay you) *by* that Way, *what Way he means.*

I know not what you may imagine; yet I cannot think you altogether ſo dull as you pretend: But others do imagine, that by the way of Steams and Vapours, he means the way of Steams and Vapours; or, if 'twill be more eaſy to your Imagination, under the Form, after the Manner, or by the Way of Evaporation. Through what Paſſages theſe Vapours were to make their Way, was another Queſtion; which, if you were to aſk him, he would perhaps tell you, through the Pores of the Body. But it ſeems, to ſerve a Turn, all Outlets muſt be barred and bolted; the Sphincters muſt be locked up, and all the Coverings of the Body grow ſo denſe and compact, that not one poor Corpuſcle ſhall gain its Liberty: So that although ſome Steams cannot extricate themſelves from putrid Fleſh, yet others will get through plaiſtered and brick Walls; nay, the very Stones themſelves are not a Fence againſt their Penetration. But if a certain Perſon, preſent at the Diſſection, does not retract, I was told there was a Moiſture ſomewhat like theſe Steams on the Burial-Clothes of Mrs. *Stout*; in others I have been informed it has been frequently obſerved: But rather than this putrefactive Moiſture, or Sort of Dew, which has been ſeen upon the Shrowds of the Dead, ſhould be thought to ariſe from the Body; I ſuppoſe you would chooſe to account for it, from the ſubterraneous Damps, working through the Coffin, and ſo ſettling on the Corps.

Page 493. I make no Doubt, but that dead Fleſh, whether in or out of Water, will quickly grow putrid; but which of them will be ſo ſoon-eſt, I cannot be poſitive; though I am rather inclining to Dr. *Garth*'s Opinion, and to think that Water will rather retard than haſten Putrefaction: In a little Time I ſhall be better able to give Satisfaction to them who require it.

Page 493. You muſt excuſe me, if I don't come up to your Belief, that there was a *Lapſus Linguæ* in the Doctor's Diſtinction of Accident and Deſign; as believing it founded both on Reaſon and Experience: But if you will allow them as much Difference as may be found in your witty Simile, *Page ibid.* between the Perſon who putteth the Halter about his own Neck, and one (as you expreſs it) that the Hangman forceth it on; I know not whether they will deſire any more.

Page ibid. The Animals I drowned had all of them much Froth come from their Mouth and Noſtrils; and after having taken out of one of them the Lungs and Windpipe, and laid them on the Table, I obſerved this ſpumous Matter plentifully to riſe up, and to run over the *Epiglottis*; inſomuch that it ſeemed likely the *Lobes* might be quickly emptied of their Water by this Way of Purgation. I cannot ſay this Froth is peculiar to drowned Perſons; for though perhaps the Lungs may not furniſh the Matter, yet to Perſons dying otherwiſe, there very often happens ſo quick a Ferment in the Stomach, that the Contents thereof are frequently diſcharged by the Gullet, under this Appearance. I know 'tis poſitively aſſerted by one of the Phyſicians, that if Mrs. *Stout* had not been drowned, there had been none of this Purgation: I ſuppoſe he means from the Windpipe; and then I am inclined to the ſame Opinion.

Mr. *Herriot* muſt be anſwerable for his own Contradiction; I am ſo far from defending him, that if he or any one elſe ſhould tell me it was ſo general a Rule as did admit of no Exception, I ſhould give little heed to them, ſince I find it very uncertain.

Page 494. Having now, as you ſuppoſe, cleared the Way, and knocked down all before you; the next Thing is your Account of her Death: But if I am not much deceived, the Entrance to it is, either through your Unfitneſs for the Taſk, or the Weakneſs of your Intellect, uſhered in with a very great Miſtake.

If this Gentlewoman (ſay you) *was not drowned, as the Doctors and Surgeons for the Priſoners ſeem to inſinuate.*——

How! Did the Doctors for the Priſoners inſinuate that ſhe was not drowned? I profeſs I thought they had all taken it for granted that ſhe was drowned. Dr. *Crell*, I think, in particular, was a Phyſician for the Priſoners; and he expreſly tells the Judge, that he is not to deſcant upon the Matter of Fact, whether ſhe drowned herſelf; yet ſaith he, My firm Opinion is, That ſhe was drowned.

Now if to be poſitive, or firmly to believe ſhe was drowned, be the ſame Thing as inſinuating ſhe was not drowned, I ſee not how any Man can rightly apprehend another's Meaning, but by the Rule of Contraries. I confeſs you have already told us of the Weakneſs of your intellect; but how weak ſoever that may be, I muſt needs think your Memory is very treacherous. Now as to the Manner of Mrs. *Stout*'s Death.

Firſt then we are to underſtand, *She was knocked down with a Blow upon her left Ear:* Secondly, *After ſhe was down, ſhe was throttled with the Gripe of a ſtrong Hand:* And, Thirdly, *That the Perſon who throttled her might gripe the ſtronger, he reſted his Arm upon her Breaſt.*

On my Word, Sir, you have made it out extremely well; I find it is a rare Thing to have a quick Invention: And I muſt tell you, for your Encouragement, 'tis a Queſtion whether the beſt Mathematician in our City of *London* could have done it more exactly. 'Twas well your fruitful Genius was conſulted to untie this Knot, otherwiſe we might have met with much Difficulty, and perhaps had never been able to have ſolved ſo many perplexing *Phænomena* with ſo much Perſpicuity.

I muſt confeſs, 'twas very unlucky for Mr. *Cowper*, theſe Settlings happened ſo pat for your learned Comments: But had they been elſewhere, I fear they would not have eſcaped your penetrating Judgment. Thus upon the Belly they might have been made by kneeling to keep her down; upon her Back, by falling on the ſaid Part againſt the Ground: Her Thighs might happen to be trampled on in the Scuffle; and nothing more likely, than that ſomebody ſhould lie upon her Legs, for fear ſhe ſhould riſe again before they had diſpatched her. Thus, right or wrong, rather than it ſhould be thought ſhe was acceſſory to her own Death, we muſt find out the beſt Means we can, on which to ground a Perſuaſion than it happened otherwiſe, that then of Neceſſity there muſt be Violence in the Caſe.

We come now to the Reaſons, Why you cannot believe ſhe did deſtroy herſelf: Which I ſhall briefly ſpeak to, as they lie in Order; and, with you, ſubmit myſelf to better Judgments.

The firſt is, Page 494. *Becauſe ſhe was found without her Gown and Nightrail; which* (that we may have a Salve for every Sore) *were very probably torn in the Scuffle.*

As to this, I muſt think it rational to ſuppoſe, that ſhe herſelf might take them off, to promote (as ſhe might imagine) the ſpeedy ſinking, or prevent the Diſcovery of her Body, by their ſpreading on the Surface of the Water; nor do I ſee any great Difficulty in the Thought, that a *Norwich* Stuff may be rotted under Water in as little Time as the Gown was of which we are ſpeaking. If the Nightrail be never found, I hope it does not follow that ſhe was murdered: I ſhould rather think, if the Gown was brought and thrown in afterwards, ſo might the Nightrail too; which would have been as eaſily rotted elſewhere as the Gown, and with the ſame Trouble both might have been caſt into the Water. I can't ſuppoſe, admitting it had been in the River from the Time of her Drowning, that it would have been always in one Place; but rather carried by the Stream under Water, ſometimes to one Place, ſometimes to another; ſometimes lodged, and ſometimes at Liberty; as we find other Trumpery will be under a Current: So that, ſuppoſing the Miller had very diligently cleared that very Stake but half an Hour before, what hinders the Poſſibility but that the next half Hour the Gown, either by itſelf, or together with other Traſh, might be carried thither by the Stream and lodged?

Secondly, *Becauſe ſhe was found floating; of which you make no Doubt, becauſe it was ſworn by ſeveral Witneſſes.*

I have already taken Notice, that from this there can be nothing cer-

tainly inferred: Dead Bodies thrown into Water, I am ſatisfied, will often ſink; and drowned Bodies ſometimes will not: But as to the Caſe before us, 'tis plain that ſome of thoſe who viewed the Body gave a different Relation from ſome others. Thus ſome of them ſaid ſhe did float, though it was under Water: whilſt others, who ſhould know beſt, being the Pariſh-Officers, and employed by the Coroner to take her out, depoſe, that the Body lay half a Foot under Water, and that, for any thing they could perceive, her Feet might touch the Bottom; and farther, that when ſhe was heaved up, there were ſeveral Sticks and Flags on which ſhe reſted: But without all this, Sir, I think it very natural for a dead Body, which is always buoyant in a Current four or five Foot deep, by the bare Force of the Stream, when it meets with a ſlanting Oppoſition, to be raiſed from the Bottom.

Page 494. Thirdly, *Becauſe her Belly was not at all ſwoln.*

Nor was it at all neceſſary, though drowned, that it ſhould.

Fourthly, *Becauſe no Water came out of her when lifted out of the Water, nor purged from her afterwards.*

This, with Submiſſion, is a Miſtake: For tho' there is no Quantity of Water taken notice of to iſſue from her, yet it is agreed on both Sides, that ſhe did purge at the Mouth and Noſtrils; ſome ſay more, others leſs. The two Principal, who took her out, and ſtood by for ſome time afterwards, do affirm, that the Froth came out after ſuch a Manner as to run down the Sides of the Face, and that as it was wiped off, freſh Froth came preſently on again; which Dr. *Crell* does aſſert could not have happened, had ſhe been ſtrangled, or otherwiſe killed, before. Whether this be ſo or not, I believe it very poſſible, where little Water is received (and very little will ſuffice to drown a Perſon), if there be ſo great a Purgation at the Mouth and Noſtrils, moſt, if not all the Water may be turned into a ſpumous Matter, at leaſt ſo much, that there will be no abſolute Neceſſity for Water to run out upon the Motion of the Body afterwards.

Fifthly, *Becauſe her Inwards were not putrefied.*

After ſix Weeks Time I ſhould indeed have expected Putrefaction from any Perſon under Ground, that had not been embalmed, without Regard to Water taken into the Body; which, whether or no it haſten Putrefaction, is very diſputable: What it may do under the Earth, I know not; but I much queſtion, whether dead Fleſh, covered over with Water, will grow putrid ſo ſoon as that which is expoſed to the immediate Contact of the Air. Of this I ſhall be able to ſay more in a little time, and for the preſent leave it as a Problem undecided.

Sixthly, *From the ſeveral diſtinct Settlings of Blood, unuſual in drowned Perſons.*

Upon the Trial, it is affirmed by Mr. *Camlin*, that both Mr. *Dimſdale* and himſelf having viewed the Body, did give it in as their Opinion to the Coroner, that there were no other Settlements or Stagnations of the Blood, than what may uſually happen to drowned Bodies: Mr. *Camlin* inſtances in the Child for one; but whether that were ſo or not, I have perceived it myſelf on the Superficies of a drowned Body; nor do I ſee why it may not be found on the Neck and Breaſt, as ſoon as on other Parts.

Page 495. Seventhly, *From the continual Diſturbances Mrs.* Gurrey *was under, both in Mind and Body; nevertheleſs ſhe would not diſcover it, till ſhe was almoſt frightened out of her Senſes, by the Voice, as ſhe thought, of Mrs.* Stout, *which uttered theſe Words,* Divulge, conceal nothing.

If Mrs. *Gurrey* was diſturbed in Mind, it would ſeem ſtrange that ſhe ſhould not be diſturbed in Body; the latter being, as I ſuppoſe, ſeldom or never eaſy whilſt the former is under Trouble or Diſquiet. But whether Mrs. *Gurrey*'s mighty Diſturbance had other Riſe than a Whim of the Brain, founded upon a ſtrong Prepoſſeſſion of Fancy, may very reaſonably be queſtioned: For my Part, I look on it ſo natural for a doating, ignorant old Woman to be terrified with the Diſorder of her own Imagination, before-hand perverted by too deep Reflection, though the ſame has nothing but a *Chimæra* to ſupport it, that I am never ſtartled when I hear of their Pretences to Voices and Revelations. Theſe you know are not ingroſſed, though more peculiar to a diſtinct Sect. So that if once ſuch Perſons happen to be ſtrongly opinioned that any thing may be ſo, they need but fall aſleep, for a Confirmation that it is ſo.

Had you not already acquainted us with the Weakneſs of your Intellect, and your Incapacity, *&c.* I ſhould have been ſtartled that a Man of Learning and ſolid Judgment ſhould build on the idle Fancies of a dreaming old Woman. I think, how greatly ſoever ſhe might be diſturbed before in Mind or Body, ſhe has now more Reaſon to be concerned, that by a fond Belief of a Revelation, thoſe Men ſhould be brought into Danger of their Lives, whom we have a great deal of Reaſon to believe were as innocent as herſelf, and little or none to think they ſhould be guilty of ſuch a horrid Fact as they were accuſed of.

Eighthly, *From what is ſworn by the* Gurreys *againſt their Lodgers at the Trial.*

Could I believe all to be true that the *Gurreys* ſwore, I ſhould make no Queſtion of the Likelihood of theſe Men's Guilt: But that they did ſtretch in ſome things, is very eaſy to believe, by ſome Particulars at the Trial; and by their Behaviour before, at, and after the ſame, we have great Inducements to perſuade us that they did ſo in others. Thus it is proved that *Gurrey* himſelf went out of the Court in a boaſting way, to tell ſome of his Acquaintance, That he had done *Cowper*'s Buſineſs, or to that Effect. And at another time he ſaid, That if Mr. *Cowper* had viſited old Mrs. *Stout*, none of this Trouble had befallen him. Another thing diſcovers the Malice of the Proſecution, in that though themſelves ſuſpected Mrs. *Stout*'s Maid, yet this was not to be taken Notice of, for fear of taking off her Evidence: And if his Wife could ſo readily turn the Fifty Shillings Mr. *Marſon* had that Day received in *Southwark*, for Buſineſs done in the *Borough-Court*, into Fifty Pounds, ſuppoſed to be paid him for murdering Mrs. *Sarah Stout* at *Hertford*; ſhe might by the ſame kind of Improvement, or by a Miſtake, underſtand all the reſt.

It ſeems indeed to me the moſt notorious Abſurdity that can be imagined, that had theſe Men really come down on ſuch a Deſign, they ſhould go directly to tell their Landlady, Mrs. *Stout*'s Buſineſs was done; they had ſpoiled her courting Days; and that one of them had received Fifty Pounds for doing her Buſineſs.

In Matters of this Nature, where we can have nothing but idle Stories and an Old Wife's Dream, to raiſe the Suſpicion, I think it highly behoves us, before we paſs our Cenſure, to pay a juſt Regard to the Character and Reputation of the Perſon. Thus, indeed, though it will be impoſſible for Mr. *Cowper* to clear himſelf in the Opinion of every one who knows nothing of him, yet I am ready to think, there are few who know him (unleſs ſome particular Perſons, that upon any Terms would willingly ruin the Intereſt of his Family in that County) will be brought to a Perſuaſion, he could ſo barbarouſly imbrue his Hands in Blood, though inſtead of the pretended One thouſand Pounds he might have gained Ten: And as to the other Perſons, 'tis viſible they live in Credit and Reputation, their Characters well atteſted, and not one of them in the leaſt likely to make an Aſſaſſin for the Lucre of Five hundred Pounds.

Page 495. Ninthly, *From the Sentiments of the Grand Jury.*

I muſt needs think, that on ſo formal an Indictment drawn up againſt theſe Gentlemen, ſuch ſtrenuous Allegations of their being guilty, ſo foul a Crime charged on them, ſuch a Circumſtance attending as that of Mr. *Cowper*'s being laſt in her Company, and the others of his Acquaintance; eſpecially when Mrs. *Gurrey*'s Tale had been ſet out with Abundance of Aggravation; I ſee not how, for publick Satisfaction as well as private, the Grand Jury could do leſs than find the Bill. But as to the Petty Jury, as you call them, I wiſh you had named thoſe ſeveral who did believe her murdered after the Trial: I am aſſured that ſome of them have openly declared, they thought the Gentlemen we ſpeak of had been ſo much abuſed, that the Proſecutor's Eſtate, if it were ten times larger than it is, was little enough to make them Reparation.

As to the Letters produced in Court, your Thoughts it ſeems are, *That they are not of a legitimate, but a ſpurious Iſſue:* And why?

1. *Becauſe the Stile doth no ways ſuit her Character.*

If the Author of the *Hertford Letter* had no extraordinary, or perhaps no Knowledge at all of her, but takes every thing on Truſt from her Friends and Relations; he ought not to be ſo poſitive, that the Stile does no way ſuit her Character. If by Stile, as the Word generally is underſtood, you mean the Order of her Thoughts, or the Manner of her Expreſſion, you muſt own ſhe might have Senſe enough to be the Author of thoſe Compoſitions. But I find you make ſo bold with the Uſe of Words, and take them ſo differently from other learned Men, that in ſome Places it occaſions a little Difficulty to underſtand you. If by Stile then, as I imagine, you would ſignify the Subject of the Diſcourſe, or the Matter of the Compoſure; I have more Reaſon to think, than I will at preſent make publick, that theſe Letters do well enough ſuit her Character with ſome that knew her: And I muſt tell you, that I am ready to believe, had her Mother been aſked the Queſtion ſome Months before ſhe died, when ſhe had ſome Words with her one Evening in the Garden, or about the Time when *Theophilus* was ſent for to reprove her, about her falling from the Light; I ſay, at theſe Times I can't think her Mother would have denied but that theſe Letters might have been ſuitable to her Character. However, ſhe is now out of a Capacity to defend herſelf; and upon that Account it might ſeem ill with Contempt to tread upon her Aſhes: I ſhall therefore ſay no more, but that I would not have you too buſy with the Character, leſt you ſhould happen to make good an old Proverb.

2. *Becauſe the Mother doth affirm, the Letters ſhewn in Court were of a ſmaller Character than ever ſhe obſerved her Daughter to write; neither doth her Brother think them to be genuine.*

Would it not have been very odd, if the Mother and Brother, who came to ſecure the Reputation of ſo near a Relation (though never ſo well ſatisfied that it was her Hand), ſhould have ſaid otherwiſe than they did? For my part, I take both their Anſwers to be ſo unſatisfactory, not to ſay fooliſh, that nothing but the Relation they were ſpeaking for can plead their Excuſe.

The Mother being aſked by the Judge, whether ſhe thought it was her Daughter's Hand? replies only, *How ſhould I know? I know ſhe was no ſuch Perſon; her Hand may be counterfeited.* Being queſtioned again, what ſhe would ſay to it if it had been written in a more ſober Stile? She anſwers, *I ſhan't ſay it to be her Hand, unleſs I had ſeen her write it.*

The Brother being interrogated on the ſame Queſtion, ſays, *'Tis like my Siſter's Hand:* But being aſked if he did believe it was her Hand? He replies, *No:* And why? *Becauſe it does not ſuit her Character.* Now let the World judge, if this contains any more than if the Mother had ſaid, Becauſe ſhe was my Daughter, or the Brother, Becauſe ſhe was my Siſter, we won't believe it, leſt the World ſhould look on her to have been a lewd Woman.

3. *Becauſe there was no Mention made of theſe Letters, till the Common Report of her being with Child (which had been induſtriouſly ſpread abroad by ſeveral, but by none more zealouſly than by a Nominal Quaker, her former Admirer) was proved to be falſe,* &c.

If theſe Letters were taken notice of ſo ſoon as the Report of her being with Child, it was very early; for that Morning ſhe was taken out of the Water, it was whiſpered in the Country, and at Night I heard from ſome in *London*, that they believed it very likely for her to be with Child; and that to prevent the enſuing Infamy ſhe had made herſelf away. This was no more than what is generally ſuſpected, when a ſingle Gentlewoman is by any means acceſſary to her own Death. So that without Diſpute, if the nominal Quaker had not been concerned in it, the Report would have ſpread without him. But I judge this Epithet is beſtowed on him, not ſo much for that he thought and reported her to be with Child, which hundreds did beſides him at that time, but becauſe he was ſo very officious to prove her Hand by his Receipt.

This may indeed be thought a mean-ſpirited Action from him, as he had been her former Admirer: And I think if her Hand-writing could have been proved without his Appearance, he ſhould have ſtirred laſt. However, I would not have you ſo very angry at him, ſince I don't find that he got any thing more by it, than to have the Judge informed that he was one of their own Sect. And if for this only he muſt be a nominal Quaker, I could tell you of ſome that have had great Parts to act in this Proſecution, that are as far from being real Quakers (if to be ſo is a Perfection) as Mr. *B*——.

4. *Becauſe Mr.* Marſon *and Mr.* Archer *on the Trial ſwear, That Mr.* Cowper *depoſed, That Mrs.* Stout *was a modeſt Perſon, &c.*

When

When Mr. *Cowper* was before the Coroner, he dreamed not of the approaching Storm that was coming upon him: And I think 'twas not reasonable that he ſhould concern himſelf at all with her Character; there were not wanting thoſe who were ready enough to think he had been too familiar with her, and that on ſome Reſentment taken at his Carriage to her ſhe had deſtroyed herſelf: So that if it were only to wipe off this Suſpicion, his Account of her was no other than what any Man under his Circumſtances might have given. I can't tell what you might have thought of him, but had he told the Coroner he knew ſhe was melancholy; that it was upon his Account, for that having formerly been very civil to her, he grew of late ſick of her Acquaintance; and that becauſe in his laſt Viſit he had betrayed ſome little Indifference, and notwithſtanding her Importunity, would not ſtay to lie at her Houſe; ſhe had therefore in a Paſſion thrown herſelf into the River; if Mr. *Cowper*, I ſay, had given the Coroner ſuch a Relation as this, I ſhould have thought him a Perſon of very little Underſtanding.

Page 495. As to her Melancholy, I believe it was ſuch as did make her Head and her Heart ache alſo; and that it was more than a common Hemicrane, whatever you (who had perhaps no great Intimacy with her) may imagine, or her Mother and Brother give out, I am ſatisfied there wants no Proof of ſuch a Melancholy as was next to Diſtraction. There is a certain Gentlewoman now in being, who cannot deny that ſhe had heard Mrs. *Stout* wiſh herſelf dead, ſaying, ſhe was the miſerableſt Creature living; and that ſhe hoped, if 'twere poſſible to die after ſuch a Manner that the World might know nothing of the Matter, nor ever ſo much as mention there had been ſuch a Perſon living. But indeed her Melancholy is too well atteſted, to be ſo much as doubted of by any diſintereſted Perſon; and therefore as you are apt to think there are many Friends and Relations bigotted to a Party that will not boggle to tell a Lye to ſave a Friend or near Relation from ——— I ſuppoſe you mean *the Gallows*; ſo, on the other hand, I believe there may be thoſe in the World who would not ſcruple to tell an Untruth, which is of near Kin to a Lye, and if it were in their Power, would bring a Man to the ſaid Place, rather than it ſhould be thought a near Friend and Relation was in love with a married Man.

The Gentlewoman you take Notice of, ſo much importuned by the Deceaſed to ſtay with her that Night, if ſhe has not altered her Story, will acknowledge that Mrs. *Stout* did tell her ſhe was very much indiſpoſed; and farther, ſaith ſhe, You ſee I am very melancholy, ſo that it will be the greater Unkindneſs if you leave me at this Time alone.

Page 496. You ſay there are a thouſand Pounds wanting of her original Fortune: I wiſh you had told us whether you ſet aſide the Charge of the Proſecution; if you include this in the Want, one half might be expended that Way; for I ſuppoſe there was nothing ſpared to carry it on.

I have heard of People's wanting that which they never had; and I am credibly informed this is the Caſe in Debate. Some of your Countrymen, that have been many Years acquainted in the Family, do tell me there is as much found as ever ſhe could be thought worth; but if you would be credited, you muſt give better Proof than yours, or her Relations ſay ſo. However, I think this to be very little material; ſhe might, though in ſome Things be very frugal in others, be as extravagant; but which Way ſoever 'tis gone, it ſeems nothing leſs can repay it than the Lives of Perſons who had never ſeen her.

Though the Quakers Affirmation will not be taken in Criminal Caſes ('twas well, I think, that it was not admitted in this particular one), yet they have now the Privilege to publiſh their Reaſons, why they ſuſpected Mr. *Cowper* to be privy to the Receipt of any of her Money, more than that which the Writings found in her Cuſtody, and his own Acknowledgment do evince. I am ſure he has bid them a fair Defiance, having openly challenged the worſt of his Adverſaries to diſcover what they can of this Nature.

If they think fit to draw up any Thing of this Kind, I ſhould adviſe them to make uſe of ſome abler Clerk than the Author of the *Hertford Letter*; for if he has the Management, 'tis a great Chance if we are not entertained with one of Mrs. *Gurrey*'s Dreams, or ſome ſuch ridiculous *Innuendo*.

Page ibid. In this Place we are once more acquainted with the Uſe of the *Epiglottis*, which you will have continually to cloſe on the Mouth of the *Aſpera Arteria*, unleſs in Expiration. On the contrary, I have told you (and will ſubmit myſelf to any Anatomiſt in *Europe*), that it is for the moſt Part open, and never exactly cloſes but upon *Deglutition*; ſo that whatever you build upon that Notion muſt fall to the Ground.

Page ibid. I think 'tis but reaſonable, that Mr. Baron *Hatſell* return his Thanks to you, for the Compliment you put upon him in the Cloſe of your Letter. I am ready to apprehend, that there is no Trial ſuffered to be printed, till after the Examination of the Judge, and his Permiſſion firſt obtained; and therefore muſt needs think Omiſſions and Alterations, eſpecially of great Moment, as theſe ſhould be, which, you inſinuate, is a very great Injuſtice to the World, an Injury to Truth, and too ſiniſter an Action for a Judge to be guilty of. But let who will ſtand in your Way, I ſee you will have a Fling at them; and rather than be thought to have nothing at all to ſay, will be telling us of that, which, if poſſible, comes to leſs.

Thus, to heighten the Suſpicion of Guilt, we are entertained with a Tale of a Tub, about Mr. *Stevens*'s being ill; or, as you expreſs it, taken with a ſtrange Sort of Fit. I hope, Sir, 'tis not always an Argument of a Man's Guilt, that he cannot carry himſelf unconcernedly, when he ſees his Life hanging by a Hair, or depending on the Delivery of a Word or two from the Foreman of a Jury: 'Tis Time enough to cenſure when we ourſelves have undergone the Trial.

Your Story of the Wine-Cooper I have never heard of; and really, I am ſo deſperate jealous of your Relations, that I dare not credit them till they come with more Authority: When I have better informed myſelf, I ſhall be better able to give you my Opinion.

Your Prayer, methinks, with which you conclude, had better have been left out; ſince, though it wants the Length of the *Phariſees*, whoever takes Notice of the Spirit that runs through the whole Letter, will need no Argument is to perſuade him that it proceeds from an Hypocrite. There is little Appearance that 'tis your Deſire the Innocent may be cleared from Aſperſions caſt undeſervedly on them, when for more than ſix Pages, you are venting the utmoſt of your Malice, and by the baſeſt Means imaginable, would inſinuate thoſe Gentlemen are Guilty, who for any Thing you know of the Matter, may be as innocent as yourſelf.

Let me tell you, Sir, I think it a very bold Attempt, and ſuch as 'tis great Pity does not come under the Laſh of the Law. When a Gentleman has taken his Trial, and it does appear upon that Trial, there is no Proof of the Fact he is charged with, nor indeed any Thing on which to ground ſo much as a Suſpicion, unleſs that of his being unfortunately the laſt Perſon in her Company: In a Word, when Faction and perſonal Prejudice appear the only Motives of the Proſecution, whoever brings the Buſineſs afreſh on the Stage, does only expoſe the Reſtleſſneſs of his own Mind, and plainly evidence that he is neither a true Gentleman, nor a good Chriſtian.

I have looked over your Poſtſcript; and, as in many Places of the Letter, perceive through the Weakneſs of your Intellect, or your Unfitneſs for the Controverſy, you have made good your Prognoſtick of betraying a little Ignorance.

Firſt of all you tell your Friend, You make no doubt but he has heard, that the Surgeons that opened Mrs. *Stout*'s Body, depoſed ſhe was a Virgin. Now if he had heard as much before, as you make no doubt he had, I don't ſee to what Purpoſe, or what News it could be to inform him of that he had heard before; but being fearful it had not reached every Body's Ear, I make no doubt, this Intelligence is to inform the World. But doubt you as you pleaſe, had I found the Surgeons depoſed as you report, I ſhould be ready to doubt whether they were wiſe Men or Fools.

I find nothing like it in the Affidavit, of which, you ſay, you have delivered us a true Copy.

They tell us, indeed, *They found the* Uterus *perfectly free and empty, and of the natural Figure and Magnitude uſually in Virgins*; but ſurely this will not amount to a Depoſition, that ſhe was a Virgin: All that can be hence inferred, is only that ſhe had not conceived; and if it be poſſible for a Woman *in Coitu* to miſs of Conception; if miſſing of a Conception, the Womb may, notwithſtanding the Carnal Contact, retain the natural Form and Figure uſually in Virgins; why then, I ſay, all this implies no more than a bare Probability that ſhe had not known a Man.

I muſt confeſs, till now, I never heard that the Figure or Magnitude of the Womb were numbered amongſt the indubitable Marks of Virginity: And as to the State of the *Vagina*, the *Myrtiform Caruncles*, and *Hymen*, which Mother *Peppercorn* herſelf could only gueſs at, there is no Notice at all taken; if there had indeed, it would only have furniſhed Matter of Deriſion, the Body having been ſo long interred. So that you ſee, for any Thing pretended to in the Affidavit, or elſewhere, ſhe might not be a Virgin; though Charity ſhould oblige us to hope at leaſt that ſhe was.

POSTSCRIPT.

SINCE this REPLY went into the Preſs, I have been informed by a Gentleman of unqueſtionable Credit, that the Story of the Wine-Cooper, at the Cloſe of the *Hertford Letter*, took its Riſe only from what follows.

There was, it ſeems, a Perſon going down to the Aſſizes, who had the Misfortune to be thrown from his Horſe, and was taken up as dead: Being carried to his Lodging, he began to rave, and talk idly; which was no more than the Effect of a Delirium, ariſing from the Concuſſion of his Brain, which might have made any Man light-headed as well as he; and which nothing but one as mad could have improved after ſuch a Manner as the Letter-writer has done.

By this the Publick may be informed of the Diſingenuity, not to ſay down-right Villainy, of ſome People in the World; who miſſing their Deſign of taking away a Man's Life, ſeek all poſſible Ways of murdering his Reputation.

Some OBSERVATIONS *on the Trial of* Spencer Cowper, J. Marſon, E. Stevens, W. Rogers, *that were tried at* Hertford, *about the Murder of* Sarah Stout; *together with other Things relating thereunto.*

TO lead, and to give ſome Light into this Matter, it may be neceſſary to give ſome Account here, how, and upon what Occaſion the Acquaintance of *Spencer Cowper* and *Sarah Stout* began.

The Ground and Riſe thereof took its Original from her Father, who at all Elections promoted the Intereſt of the *Cowpers*, to the utmoſt of his Power; through which a great Intimacy was created between the Families of the *Cowpers* and the *Stouts*; which did not expire with the Death of her Father; for her Brother, by the Father's ſide, continued his Reſpects to that Family, and ſpared no Pains to eſpouſe and carry on their Intereſt, in order to their being choſe Parliament-Men for that Town. Theſe Obligations engaged the two Families to a frequent Converſation; inſomuch, that when they were in the Country, ſome or other of them were often together, as well the young Women as the Men; as appeared by what his Brother's Wife ſaid at his Trial, *That ſhe was but ſix Days at* Hertford *the Summer before, and that ſhe ſaw her* (to wit, *S. Stout*) *every Day*. And great Pretenſions of Love, and Proffers of Kindneſs, were expreſſed by the *Cowpers* in general to the *Stouts*; and by this Man, *Spencer Cowper*, and his Wife, in particular, to the deceaſed young Woman: And thus it continued, in appearance, till the Day that ſhe was forced off the Stage of this World.

When her Father died, he left her ſole Executrix, and gave her moſt Part of his Perſonal Eſtate: And a conſiderable Part of it being in the Brewers Hands, and in Malt, which ſhe ſold afterwards, ſhe was often adviſing with one or other, how to diſpoſe of this Money, ſo as to have good Securities for it.

About a Year before her Death, ſhe went to *London* about thoſe Occaſions, and lodged at a Goldſmith's Houſe; as ſoon as the *Cowpers* Wives heard where ſhe was, they made her a Viſit, both *Spencer*'s and his Brother's, and invited her to their Houſes.

Whilſt ſhe lodged at this Goldſmith's Houſe, he laid out ſeveral Hundred Pounds for her in Malt-Tickets, and other Securities of the Go-

vernment; but she being not willing to lay out much that way, but rather on some Mortgage of Land, she went to a Lawyer, with whom she was acquainted, to see if he could dispose of some for her; he told her he could help her to a Mortgage for Five Hundred Pounds, but they would give but Five in the Hundred: So she takes it into Consideration; but afterwards, she being at Mr. *Spencer Cowper*'s, and he falling into some Discourse with her about her Affairs, and understanding she had a considerable Sum of Money to put out, he proffered to do her all the Kindness that lay in his Power; and would help her to a Mortgage of Land three times the Value of the Money lent on it, at Six in the Hundred; and would see that the Title should be good, and be as careful in it, as if it were his own Concerns; and if she wanted Counsel at any Time, either to put out, or to recover Money that was owing her, or any thing else, for which she had Occasion, he would give it her *Gratis*, which from another must cost her some Guineas: So she accepted of his Proffer, and told him, she would depend on his Advice, not questioning to have good Security for her Money. When she came home to her Lodging, she told the Goldsmith where she lodged, that now Mr. *Spencer Cowper* had promised to help her to Securities, and he was to dispose of her Money.

Soon after this, she went Home to *Hertford*, and told her Mother the same, and asked her if she had any Money to put out; if she had, it might go amongst her's, and her Mother should have no Trouble with it; for she would pay her the Interest as it became due: Her Mother then asked her, if she could so far confide in him, as to receive her Money, to pay it, and to make the Writings, and to look after the Title, and all without the Inspection of any Body else? She said, Yes, she believed that he was a very honest Man, and she thought she might trust him with more than she had to put out; and he being a Man of Repute, it was below him to wrong her. Then her Mother, thinking the same, gave her One Hundred and Fifty Pounds to put amongst her's, which she hath never heard of since; but it is gone with the rest.

About a Month after, *Spencer Cowper* came to *Hertford*, and took Lodgings for his Wife and Family, and then brought his Wife to give this young Woman a Visit, and to be further acquainted with her. After this, she seemed to love and like her Company so well, that she said, *She did not desire the Company but of few, or none else in the Town; and therefore would make no Returns of their Visits, till the Week before she went home to* London; and would come frequently two or three Times in a Week to visit her: And when her Husband was in the Country, he sometimes would come with her, and thereby had the Opportunity of discoursing her about her Affairs.

When she had gathered in near what she intended he should put out, from the Brewers and others that were indebted to her, she writ a Letter to *London* to him; and one of her Acquaintance coming to visit her, before she had sealed it up, she bid her read it, which she did; in which Letter she writ, viz. *That she had a Thousand Pounds to put out, and that several Hundreds of it were then ready; and the rest, to make up that Sum, would be so in a little Time, or so soon as he could dispose of it advantageously for her.*

After this, she several Times, in Discourse with this Woman, hath told her, *That he was buying an Estate for her, in Ground-Rents, which he had recommended to her for an extraordinary Pennyworth; and that it would be sold for a Thousand Pounds, but he believed it was worth more; and if he could not oblige her with it, he looked upon it to be so great a Bargain, that he would buy it for his own Use:* And she also told her Mother the same.

The next Quarter Sessions after this, which was the last before that Assize, at which Time her Days were ended, *Spencer Cowper* came to *Hertford*, and in the Evening he came and enquired for Mrs. *Sarah Stout*, at her Mother's House, where he was not at all expected to lodge, he not having lodged there for several Years, *viz.* not since her Father died: And after about an Hour's Discourse with her, he said, *He was destitute of a Lodging for his Landlord* Bates (where he used to lodge) *was discomposed, and made a great Noise, and he did not like to lodge there.* So she thought she could do no less, in Civility, than ask him to lodge at her Mother's House, he having then brought her that Mortgage-Deed for Two Hundred Pounds, about which he made such a long Discourse at his Trial; which Money had been carried publickly to him some Time before: At the receiving of which Security, she seemed to be very much pleased. But she having told him, that she intended to reserve some Part of her Portion for her own particular Use, in case she lived to marry, which she would put out for that End, she having enough besides; he advised her then to keep it private from all Persons, else her End would be frustrated; which, in all Likelihood, he thought she had, and that none had known her Mind in that Particular but himself, he having advised her to Privacy.

Indeed *S. Cooper* doth suggest, in a Case lately presented to some of the Members of Parliament, (see *ante* Pag. 485 to 488) That his Prosecutors had not the Impudence to suggest at his Trial (though put in mind of it), that what they accused him of was done for the sake of Gain. It is true, he did demand a Proof, that he had any of the deceased young Woman's Money in his Hands: And it cannot be supposed that he would conceal it, if he knew there was any one alive that could make positive Proof of it; for then it would have been in vain to have denied it: But her Mother did then attempt to speak what she knew in that Particular, and other Things too, but was stopped several Times, and not suffered to speak, unless she would swear; which, he knew well enough, her Persuasion would not admit her to do.

The next Thing observable is, the same Woman, before-mentioned, which read saw and her Letter sent to him, which gave an Account what Money she intended he should dispose of for her, and that she had several Hundred Pounds of it then ready: She being with her one Day in her Chamber, about two Weeks before her Death, she bid her look in a Drawer there, and bring her the Money therein; upon perceiving it, *Am not I very rich?* said she. The other demanding the Reason of that Question, *Because*, said she, *it is all the Money that I am now Mistress of:* which was only two Guineas and a little Silver, notwithstanding she had so many Hundred Pounds in her Possession not long before. And about the same Time, she being in Discourse with another Person about her Concerns, she said, That *Spencer Cowper had a great Deal of her Monies in his Hands, and that he was to have more:* And her Relations do miss about a Thousand Pounds; and they know of none she disposed of any other ways, after she writ that Letter to him. And when her Mother asked him before the Lord Chief Justice *Holt*, What Money he had in his Hands of her Daughter's? He said, *None*; and also said, *He thought his Reputation would have secured, or carried him above Suspicions or Examinations of that Kind.*

But it may easily be gathered who carried her Money away, for a great deal of it was in Gold; and that very Morning he went away, when he had lodged at her Mother's House, he very much importuned her to come to his House at *London*, and told her how glad his Wife would be of her Company, and used many Arguments to persuade her to it; and at length said, *He would not go out of the House till she had promised him to come:* But she refused to promise, and said, *She did not know when she should come to* London. This Discourse was in the Hearing of one that will evidence it upon Oath.

The Week before that Assize, she received a Letter from his Wife, which was writ after the usual Manner, as she had several not long before, very earnestly inviting her to her House at *London*, with high Expressions of Love; and so much the more she desired her Company then, because she believed they should not come to lodge at *Hertford* that Summer: And in that Letter tells her, That *they must expect her Husband at their House at the Assize*; the which she told her Mother and others who read the Letter. This Letter *Spencer Cowper* confessed to the Coroner's Inquest, that he ordered his Wife to write it for his Lodging at her Mother's House; but when he was examined by the Lord Chief Justice *Holt*, he then denied it, and said, *His Wife writ no Letter:* But her Maid, *Sarah Walker*, being present, told him, *His Wife did send a Letter, and that she herself took it in of the Post-Man, and gave it to her Mistress*; so then he could not deny that there was a Letter sent.

And accordingly he came, and sent his Horse thither; and being asked, before he rid from the Door, Whether he would come to Dinner? He said, *He was not certain, but he would send Word:* But her Mother and she staying long, and he not sending, they sent her Maid, to see whether he would come or no; who then quickly came, and dined there: And when he went from thence, the young Woman, *Sarah Stout*, going to the Door with him, asked, *If he thought to lodge at their House?* He said, *Yes, he would come and lodge at their House.* This she said as soon as he was gone, and then bid the Maid go get his Bed ready: At Night, when he came, her Mother being in the Room with her, he fell into some Discourse remote from any thing of her Daughter's Business; and, after some Time, called for Pen and Ink, to write a Letter to his Wife, although it was not Post-Night, nor did any Carrier go next Day. When he went to write, her Mother and she went out of the Room, and staid a considerable Time; but it growing late, the young Woman went in, to see if he had done, and if he would have any Supper; and what he desired, he had. Her Mother went not in again, because she knew her Daughter expected he would give her some Account of her Money, and have brought her Security for it, as he did the Sessions before for Two Hundred Pounds; and she finding that he would not speak of it before her, would not interrupt them, but gave her Daughter Time and Opportunity to speak to him. What Discourse they had, is not known; but sure enough it was very different from, and inconsistent with, what he rendered it to be at his Trial; for he had writ a Receipt in full for Use-Money he paid her then, which lay on the Table, but was never signed by her, although he pressed her to it several Times, and bid her put on her Considering-Cap, (as he confessed to the Coroner's Inquest) and asked her, If she was lazy? Yet still she refused to sign it; which plainly shewed her Dissatisfaction, and that there was more due to her, else she would never have refused it.

Between Ten and Eleven of the Clock, she called her Maid to make a Fire in his Chamber, and to warm his Bed, in his Hearing; and while the Maid was doing it, he went out: Her Mother hearing the Door clap, went into the Parlour, to ask her what the Reason was of his going out when his Bed was a-warming, and, to her Surprize, found she was gone too, and never saw her alive afterwards. She admired what the Meaning of this should be, knowing that she never used to go out so late; neither could she imagine whither they should be gone; but after some Consideration, did think he might tell her, That the Securities she expected were to be signed and sealed somewhere in the Town; and that he had persuaded her to go out upon that Account, and so was in Expectation of them quickly. The Maid that was warming his Bed stayed, expecting him to come up; thinking, when she heard the Noise of the Door, he was gone to carry his Letter somewhere; which, it's thought by some, was his Pretence in going out, thereby to draw her to the Door, to let him out; for there is no Ground to believe she went any farther with him willingly: So they sat up all Night, both her Mother and the Maid, expecting them every Minute, not knowing where to look for her at that Time of Night; but if they had, would never have gone to the River, where she was found floating the next Morning; for there was no Manner of Circumstance, either in her Words or Actions, that did give them any Cause to think she would drown herself, or that she ever had any thing of that Nature in her Thoughts.

No sooner was she taken out of the River, but it was spread, by his Party, both in City and Country, That she was with Child, and had drowned herself to avoid the Shame. That she was not drowned, is clear unto all who are impartial, and have had a true Account of the Case, either at the Trial, or otherwise; as it plainly appeared by those Settlements of Blood and Bruises about her Head and Neck, and on one of her Arms; and her having no Water in her, but was empty and lank, when she was first taken out of the Water.

The Evidence was very full and plain against them, and the Judgments of the Doctors stand firm and good, and are not, nor ever can be disproved, by all the Evasions and Distinctions of Voluntary Drowning, and Drowning by Accident; nor by all those little Tricks made use of

by thoſe on the other ſide, by Drowning, and half Drowning of Dogs, and other ſuch like Experiments, whereby they have only expoſed themſelves. But when ſhe was taken up again, after ſhe had been buried ſix Weeks, in order to be cleared of that infamous Report, which then was given out, for the only Reaſon why ſhe drowned herſelf (to wit), her being with Child; then nothing could be more plain, than that ſhe was not drowned, but came by her Death ſome other way, as the Doctors and Surgeons did give their Opinion upon Oath, before the Lord Chief Juſtice *Holt*, and at the Trial alſo.

And it is very probable, that theſe three Gentlemen, *John Marſon*, *Ellis Stevens*, and *William Rogers*, knew very well how ſhe came by her Death, (whoſe Lives *Spencer Cowper* ſeemed to be more tender of than of his own) by their Diſcourſe that Night her Death was, about an Hour after ſhe was miſſing; for as ſoon as they came into their Lodgings at *John Gurney*'s, they could not forbear, but began to aſk him ſeveral Queſtions about her. Although we do not underſtand that either of them had any former Knowledge of her, yet *Marſon* pretended, that he had made Love to her, and that ſhe had caſt him off; *But*, ſaid he, *a Friend of mine is even with her by this Time*; then one of the others aſked him, *If the Buſineſs was done? If it is not*, ſaid he, *it will be done this Night: Yes*, ſays the other, *her Buſineſs is done*; Sarah Stout's *Courting Days are over*. What could have been ſpoke plainer, except they had ſaid, *She is dead?* This was poſitively proved againſt them. Alſo, the ſaid *Marſon*, when he came into his Lodging, was in a great Sweat, and called for a Fire to dry his Feet and Shoes, they being wet both without and within; and pretended, that he was juſt then come from *London*, it being then between Eleven and Twelve of the Clock at Night; whereas it was proved, that he came into Town two or three Hours before. And when *Marſon* aſked the other Two, *What they had ſpent that Day?* One of them aſked, *What was that to him? He was to have Forty or Fifty Pounds for his Share.* The ſaid *Marſon* alſo pulling out Money out of his Pocket, ſwore that he would ſpend it all next Day, for Joy the Buſineſs was done. And whereas they ſay, in their Caſe to the Parliament, *They are Men in good Buſineſs at* London: If they are ſo, it had been well if they had ſtayed in it; for ſure enough, they had no good Buſineſs at *Hertford*; neither did they pretend to any at all, but ſaid, *They came only to ſee Faſhions*, to the Woman where they lodged.

And it is very obſervable, how highly diſpleaſed *Spencer Cowper* was at her being taken up, and how he earneſtly beſought the Judge, that what the Doctors did, and ſaid then, might not be allowed, or taken for Evidence; alledging, that ſhe ought not to have been taken out of her Grave without legal Authority, for private Inſpection of Parties, altogether amongſt themſelves; whereas there ought to have been ſome on both Sides, he ſays, leſt they ſhould have broke her Scull, and the Gentlemen ſhould have been trepanned; and yet Doctor *Camlin*, Sir *William Cowper*'s Doctor, was with them all the while, as Doctor *Coatſworth* told the Judge, and was ſent for, on purpoſe to take off any ſuch Objection; and did ſet his Hand to the Certificate, of her Clearneſs of that Scandal, with the reſt of the Doctors: Which is as followeth.

WE whoſe Names are here under-written, having examined the Body of Mrs. Sarah Stout, *deceaſed, do find the* Uterus *perfectly free and empty, and of the natural Figure and Magnitude, as uſually in Virgins. We found no Water in the Stomach, Inteſtines, Abdomen, Lungs, or Cavity of the Thorax.*

John Dimſdale, Sen. — *Robert Dimſdale*, M. D.
William Coatſworth, — *John Dimſdale*, Jun.
Samuel Camlin, — *Daniel Phillips*, M. D.

Hertford, April 28, 1699. — Copia vera.

When all Mouths were ſtopped, and put to Silence in that Matter, and no Reaſon could be given why ſhe ſhould drown herſelf; then *Spencer Cowper* was at a Loſs, and knew not what to pretend, why ſhe ſhould do ſo; 'till (to uſe his own Words) ſome Heads were laid together, to contrive that ſhe was in love with him.

In order to this Deſign, thoſe Letters were invented, which were produced in Court, (for not a Word was ever heard of them before ſhe was taken up again) and a Witneſs was provided to prove the receiving of them both; but his Friend *Marſhall*, who was his Witneſs, had forgot the Year when the firſt was Writ, and ſaid, It was *March* was Twelvemonth; till his Memory was refreſh'd by the ſecond, which was dated but four Days after; and it ſeems they had forgotten to date that ſecond Letter, ſo as to give it any Credit at all. This was that which he calls that importunate Letter, by which he was invited down to lodge at that Gentlewoman's Houſe, which was dated the Ninth of *March*.

Now if her Maid *Sarah Walker*'s Evidence is obſerved, which ſhe begins with, *My Lord, on* Friday *before the laſt Aſſize, my Miſtreſs* Stout *received a Letter from Mr.* Cowper's *Wife, to let her know we muſt expect Mr.* Cowper *at the Aſſize; and accordingly we expected him, and provided for his coming.*

This was the ſame Day on which he ſays he received her Letter of Invitation that ſhe received his Wife's, by which he invited himſelf down. So that if ſhe had really writ that Letter, his Wife's muſt needs be writ and ſent the Day before her's could come to his Hands.

And how thoſe Letters ſhould be known to come from *Sarah Stout* is very unaccountable: For if there had been ſuch a Perſon as Mrs. *Jane Ellan* at that Coffee-houſe he mentions (which, upon Enquiry, we cannot hear there was), what had he to do to open her Letters? And how could he tell that they were for him, and came from *Sarah Stout*, ſeeing they were not directed to him, nor either *S. Cowper* nor *S. Stout* within them, but only *Sir?*

To prove theſe Letters to be her Hand, he brings his Friend *Marſhall* to ſhew Letters which he pretended ſhe writ to him, as falſe as the other; in one of which there were Thanks for his Songs. It is very unlikely that ſhe ſhould deſire or accept of Songs, one who was never heard to ſing a Song in her Life; and from *Marſhall* too, whoſe Courtſhip ſhe never received: For he himſelf ſaid at the Trial, that upon very little Trial ſhe gave him a very fair Denial. And *Spencer Cowper* alſo ſaid to the Coroner's Inqueſt, that *Marſhall* told him, ſhe always gave him the Repulſe.

This confirms the Falſeneſs of that Story which he brings to introduce his Letters. And although ſhe is gone, and not in a Capacity to defend herſelf; yet the Woman who he ſays walked with them is alive, and doth affirm, It is not true; Which is as followeth:

He ſays, It happened one Evening that Mrs. *Stout*, and another, and Mr. *Marſhall*, and he, were walking together; and Mr. *Marſhall* and the other being a little before, ſhe took that Opportunity to ſpeak to him, in ſuch Terms as he confeſſed it ſurprized him, and ſaid, ſhe did not think he had been ſo dull: He deſiring to know wherein his Dulneſs did conſiſt; ſhe aſked, if he thought ſhe would marry *Marſhall?* He ſaid, Yes; elſe ſhe had done ill in what ſhe had done: She ſaid, No; ſhe thought it might ſerve to divert the Cenſure of the World, and favour her Acquaintance with him.

This Diſcourſe, if it had been true, would have argued, that ſhe kept *Marſhall* Company, and made him believe ſhe would have him: Whereas it ſeems ſhe had never ſeen him in all her Life but once, and that was but two or three Days before; and they were not ſo much acquainted then, as to ſpeak one to the other: And therefore there could be no Ground for ſuch Diſcourſes if ſhe had walked alone with *Spencer Cowper*, which ſhe did not; for the two young Women having been taking a Walk in the Field, as they were coming home they met *Spencer Cowper* and *Marſhall*; and they both turned, and walked back before, and the two young Women together behind him: And ſhe had no private Diſcourſe at all with *Spencer Cowper*; neither had they four any Walk together afterwards, in the Field or elſewhere.

Theſe Letters, which were uſhered in by this Diſcourſe, he would have it thought that the ſhewing of them was ſo tender a Point with him, and that he did it with ſo much Reluctancy and Compulſion, that nothing elſe ſhould have forced him to have brought them upon the Stage, if he had not thoſe three innocent Gentlemen to defend (ſurely they had greatly obliged him); and he ſolemnly proteſted, that if he had ſtood there ſingly upon his own Life, on that Evidence, he would not have done it: When at the ſame time, and with the ſame Breath, he himſelf proved it falſe; for he ſays, upon the receiving of them, he ſhewed one to his Brother, and both to *Marſhall*, and they both ſaw it, and read it: That was the laſt, the *Friday* before that Aſſize, when neither his own Life nor his three Gentlemen's were in any Danger; for ſhe was then alive. And if there had been ſuch Letters of her's, he could not have ſhewed them to one that in all Probability would have expoſed or defamed her more than *Marſhall*, a repulſed Lover, a Kinſman of his Wife's, unto whom he endeavoured to betray her; who, upon ſome Slight or Diſguſt ſhe gave him, told *Spencer Cowper*, that if he was his Friend, he would ſhoot her. This ſhe told both her own and her Mother's Maid: And alſo, as it is obſerved in the *Hertford Letter*, the Printers, who writ the Trial in Short-Hand, not having taken thoſe Letters, were favoured with the Copies of them, to be expoſed to the World.

Then there was an Account given to the Judge, in the Court, of his going to *Deptford*, and was ſaid to be told his Father at Dinner in her Hearing, about a Year and a half before; which put her into a Swoon, if any body will believe it: And the Uſe that was made of this was, to render her as bad as poſſible, and make the World believe how deeply ſhe was in love with him. But it's Matter of Admiration to moſt that hear it, that he did not tell his Wife, as well as his Father and Brother, how fond ſhe was of him: If it had been true, ſurely that would have diverted her from frequenting her Company ſo often as ſhe did all that Summer following, as is before mentioned, which all the Neighbourhood can witneſs. And if ſhe was ſuch a Perſon as they now render her, why did they ſeek and deſire her Company, as they did? For ſhe has ſeveral times ſaid, ſhe never ſought their's.

And alſo, 'tis as much to be wondered at, that ſo chaſte a Man as he would appear to be, and one in ſo flouriſhing a Condition, as he ſays he is, ſhould order his Wife to write, or have any Thoughts of lodging at a Houſe, for ſaving the Charge of a Guinea (for ſo he ſaid at his Trial, that his good Huſbandry to ſave a Guinea had brought all that Miſchief upon him), where ſo lewd a Woman as he would have her thought to be did dwell, if he had been really invited; which ſure enough he was not, but invited himſelf; and ſo ſhe told her Mother before he came.

But it is plainly to be underſtood, that the Reſpect ſhe had for him, was not as for one that ſhe believed to be viciouſly inclined, but as for an honeſt Man; as appeared by the Truſt ſhe repoſed in him; and alſo his being related to that Family, whom ſhe, as well as her Relations, did ſo highly value and eſteem, that ſhe could have put not only her Money, but her Life into any one of their Hands.

She little thought what ſort of a Man ſhe had to deal with; ſhe was ſo deceived by his ſeeming Sobriety when in her Company, and the great pretended Kindneſs to her by him and his Wife, both for her own Sake and her Father's, ſhe could not imagine that a Branch of that Family could have touched a Hair of her Head, to have hurt her, or have wronged her of one Farthing: She was ſo honeſt and plain-hearted, and ſo innocent herſelf, and ſo far from deſerving any ill Uſage from him, or any of that Family, or indeed from any elſe, that ſhe, as well as her Relations, could have ſerved them to the utmoſt of their Power: But what Returns of Kindneſs have been made, and how ſhe hath been treated and defamed, now ſhe is gone, and not in a Capacity to defend or anſwer for herſelf, let the World judge.

But it is evident and plain, that moſt, or chiefly what he made uſe of at his Trial, to defend himſelf and his three Gentlemen, when he was not upon his Oath, is proved falſe, even by what himſelf did ſwear when he was examined by the Coroner's Inqueſt: For when they aſked him, if he knew any thing that troubled or put her into a Diſcontent, or diſcerned ſhe was melancholy, or knew any one ſhe was in love with, or any Cauſe why ſhe ſhould drown herſelf? Unto all which he anſwered, No, upon his Oath; he diſcerned nothing of Melancholy, neither knew he any that ſhe was in love with: He knew one *Marſhall* that was in love with her, but ſhe had none for him, but always gave him the Repulſe; and ſhe was a very modeſt Woman, and he knew no Cauſe why ſhe ſhould drown herſelf.

And yet at his Trial both he and his Witneſſes pretended to know her to be ſo melancholy as was near to a Diſtraction: And this Depth of Melancholy he would inſinuate as for love of him; and therefore ſhe drowned herſelf.

Now what can be more contradictory, or more fully prove that which he ſpake at his Trial to be falſe, than this which he himſelf did ſwear? And this was evidenced by two of the Coroner's Inqueſt, and ſeveral more would have done the ſame, if they had been ſuffered to ſpeak; but, as the Trial relates, they were ſtopped.

Many Obſervations might be made, and Inſtances given, to clear her Reputation, and to prove the Falſeneſs of what was caſt upon her; as, in particular, her ſo earneſtly inviting a young Woman an Acquaintance of hers, who had kept her Company that Afternoon, and uſed to lie with her ſometimes, to ſtay and lie with her that Night her Death was; and ſhe telling her, ſhe could not well ſtay then, ſhe engaged her to come and dine with her the next Day, and told her what was for Dinner; deſiring her Company all Day after, ſhe not intending to go from home; which ſhe promiſed to do.

And it is very obſervable, from the Beginning of the Trial to the End, what Shifts and Devices he is forced to make uſe of to drill out the Time, that there might not be enough for the Witneſſes on the other Side to be heard; and alſo his endeavouring to baffle the Evidence againſt him; as firſt, above twenty frivolous Queſtions he aſked her Maid about Poiſon, which ſhe bought to poiſon a miſchievous Dog which haunted the Houſe; and if he could by any Means confuſe and put her out, if ſhe had not had Truth on her Side, and gladly would have picked ſomething out of it, if he could have told what.

Alſo, the many impertinent Witneſſes he calls to prove his Intention to lodge at *Bardford*'s that Night her Death was, and ſending for his Bag thither, and lodging his Things there; which it ſeems was not at all expected by them; for *John Bardford*'s Wife ſaid, upon her Oath, ſhe believed *Spencer Cowper* did not intend to lodge at her Houſe; but was ſurpriſed when he ſent to her, between Eleven and Twelve o'Clock at Night, to get his Bed ready, and came before it was quite done.

And the next Night after, when he was ſent for by the Coroner's Inqueſt to give an Account where he left her, he ſaid, In the Parlour where we ſat. And being aſked, If he did not hear her bid her Maid warm his Bed? He ſaid, I thought ſhe had meant her own Bed. But it is very unlikely that ſhe would go to Bed and leave him ſitting there; or that when he went out ſhe ſhould ſit ſtill, and not light him to the Door. But if it were as he ſays, that he left her in the Parlour; for a Man of his Education and Figure in the World to go away at that time of Night, when he knew there was a Fire in his Chamber, and his Bed was a warming, and let himſelf out in the Dark, and ſay nothing to any body, it certainly looks very darkly.

And then his ſending for his Horſe three times to her Mother's Houſe the Night after her Death, before he was examined by the Coroner's Inqueſt, and would have gone out of Town then, if he could have had him, as he confeſſed to the Lord Chief Juſtice *Holt*; but at the Trial he ſaid, I ſent for him, for fear the Lord of the Manor ſhould ſeize him.

Alſo, when it was taken notice of at his Trial, by the Counſel, that he never came after that Night her Death was, to give her Mother any Account where he left her, or in any wiſe to give her Satisfaction; to this he anſwered, It might be ſtrange for me to come and viſit a Woman that I never had the leaſt Knowledge of: And yet he had ſeveral times lodged at her Houſe when her Huſband was living. And that Night alſo, that he was examined by the Coroner's Inqueſt, when they aſked him, If he diſcerned her Daughter to be melancholy? He ſaid, No; only he thought ſhe was not ſo free in Diſcourſe at Dinner as ſometimes he had ſeen her; for moſt of the Diſcourſe then was between her Mother and him. Surely he will be hard put to it to reconcile himſelf in this Diſcourſe.

And it is very remarkable, what great Diſſimulation he manifeſted at that time; for in his Diſcourſe, he taking Occaſion to ſpeak of the People called *Quakers*, he expreſſed ſo great Love for them, and for their Principles, that if ever he changed his Religion, he ſaid, it ſhould be for theirs: Notwithſtanding he derided them ſo much at his Trial, about their being by Education intitled to the Light within.

Thus, in ſhort, upon the whole Matter, it may be concluded, That the Defence he had made for himſelf and his three Gentlemen, and the moſt material Things he made uſe of, whereby they got off, and were acquitted, were proved falſe out of his own Mouth before he went out of the Court; as it may be ſeen in the Trial, where the Counſellor for the King ſays thus:

"My Lord, we inſiſt upon it, that this is a different Evidence from "what Mr. *Cowper* gave to the Coroner's Inqueſt; for then he ſaid, he "knew none ſhe was in love with, nor any Cauſe why ſhe ſhould do "ſuch an extravagant Action as to drown herſelf: But now he would "make the whole Scheme of Things turn upon a Love-Fit." And then he moved the Court to give Leave to call ſeveral Perſons of Quality and good Repute, who were there preſent, to ſpeak to her Reputation, in Contradiction to the Letters produced; declaring, that he believed the whole Town would do the ſame. Then the Judge ſaid, they would grant that; and did not queſtion it. So there was none permitted to ſay any thing to that Purpoſe.

NUMBER XXXIV.

A STATE of the PROCEEDINGS in the Houſe of Commons, *with Relation to the* Impeached Lords: *And what happened thereupon between the Two Houſes* (*a*).

Sabbati, 15 *die Februarii*, 1700.

Reſolved,

THAT an Humble Addreſs be preſented to His Majeſty, That he will be pleaſed to order all the Treaties that have been made between His Majeſty and any other Prince or State ſince the late War, to be laid before this Houſe.

Ordered, That the ſaid Addreſs be preſented to his Majeſty, by ſuch Members of this Houſe as are of his Majeſty's moſt Honourable Privy-Council.

Martis, 18 *die Februarii*, 1700.

Mr. Secretary *Vernon* acquainted the Houſe, That their Addreſs having been preſented to his Majeſty, That he would be pleaſed to order all the Treaties that have been made between his Majeſty and any other Prince or State ſince the late War to be laid before this Houſe; His Majeſty had been pleaſed to give Order, That they ſhould be copied, and that then either the Originals or Copies, as the Houſe pleaſed, ſhould be laid before them.

Martis, 4 *die Martii*, 1700.

Mr. Secretary *Vernon* preſented to the Houſe Copies of ſeveral Treaties, and Tranſlations thereof.

And the Schedule or Liſt of them was read, and is as follows: *viz.*

1. A Copy of the *French* King's Ratification of the Treaty of Partition.
2. The Tranſlation of the ſame.
3. A Copy of the Ratification of the Separate Article.
4. The Tranſlation of the ſame.
5. A Copy of the Ratification of the Secret Article.
6. A Tranſlation of the ſame.
7. A Copy of the *French* King's Declaration upon the Treaty of Partition.
8. A Tranſlation of the ſame.
9. A Copy of the *Dauphin*'s Declaration upon the ſaid Treaty.
10. A Tranſlation of the *Dauphin*'s Declaration.

Ordered, That the ſaid Copies do lie upon the Table, to be peruſed by the Members of the Houſe.

Jovis, 6 *die Martii*, 1700.

Mr. Secretary *Hedges* preſented to the Houſe (according to Order) Copies of ſeveral Treaties.

Ordered, That the ſaid Copies do lie upon the Table, to be peruſed by the Members.

Lunæ, 17 *die Martii*, 1700.

A Meſſage from the Lords by Sir *John Franklyn* and Sir *Lacon William Child*, That the Lords do deſire, That this Houſe will give Leave to Mr. Secretary *Vernon*, a Member of this Houſe, to come to a Committee of the Lords now ſitting in the Prince's Lodgings, to give an Acount of ſome Matters relating to the Treaty of Partition which their Lordſhips have now under Conſideration.

Ordered, That Mr. Secretary *Vernon* have Leave to go to the Lords as deſired, if he think fit.

Mercurii, 19 *die Martii*, 1700.

Reſolved, That this Houſe will, on *Saturday* come ſe'nnight, reſolve itſelf into a Committee of the whole Houſe, to conſider of the State of the Nation.

Veneris, 21 *die Martii*, 1700.

Reſolved, That the Treaty of Partition be read.

(And the ſame was read accordingly.)

Reſolved, That an Humble Addreſs be preſented to His Majeſty, to return the Thanks of this Houſe for his Gracious Meſſage, wherein he is pleaſed to communicate his Royal Intentions to acquaint this

(*a*) Martis, 24 die Junii, 1701.

Ordered, *That all the Proceedings with relation to the Impeachments, and what happened between the Houſe of Lords and Houſe of Commons, be examined by the Journals, and printed.*

Paul Jodrell, *Cler' Dom' Com'*

In Vol. V. P. 339. are inſerted, *Proceedings in Parliament againſt* William *Earl of* Portland, John *Lord* Somers, Edward *Earl of* Orford, *and* Charles *Lord* Halifax, *upon an Impeachment for High Crimes and Miſdemeanours*; *as alſo againſt* John *Lord* Haverſham, *for Words ſpoken at a Conference between the Lords and Commons*, 1701, 13 Will III But it is obſervable that thoſe are the Proceedings as publiſhed by the Order of the Houſe of Lords only: Theſe here inſerted are what were publiſhed by Order of the Houſe of Commons; which are omitted in Vol. V. but for what Reaſon no one can tell, unleſs Partiality: For as the Commons were the Proſecutors, ſure their Evidence, and the Grounds they went upon, ought not to have been omitted.

House, from Time to Time, with the State and Progress of those Negotiations into which His Majesty has entered, pursuant to the Address of this House:

And also to lay before His Majesty the ill Consequences of the Treaty of Partition (passed under the Great Seal of *England* during the Sitting of Parliament, and without the Advice of the same) to this Kingdom, and the Peace of *Europe*, whereby such large Territories of the King of *Spain*'s Dominions were to be delivered up to the *French* King.

Ordered, That a Committee be appointed to draw up the said Address. (And a Committee was appointed accordingly).

Lunæ, 24 *die Martii*, 1700.

Sir *Edward Seymour* reported from the Committee, to whom it was referred to draw up an humble Address to be presented to His Majesty, that they had drawn up an Address accordingly, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same was read, and with an Amendment agreed unto by the House, and is as followeth; *viz.*

Most Gracious Sovereign,

"WHereas nothing can more conduce to the Safety and Honour of your Majesty and this Nation, than taking the Advice of your *English* Councils, we your Majesty's most dutiful and loyal Subjects, the Commons in this Parliament assembled, do, with all Humility, return your Majesty our hearty Thanks for your Gracious Message, wherein you are pleased to communicate your Royal Intentions to acquaint this House with the State and Progess of those Negotiations into which your Majesty was entered, pursuant to the Address of this House; which Method had your Majesty been advised to take before the Treaty of Partition was perfected (which was passed under the Great Seal of *England*, during the Sitting of Parliament, and without the Advice of the same), we had been prevented from laying before your Majesty what we are now bound in Duty (though with Grief) to do, the ill Consequences of that Treaty to this Kingdom, and the Peace of *Europe*, which so directly tended to increase the Power and Greatness of *France*, by delivering up to the *French* King such large Territories of the King of *Spain*'s Dominions, and to the Destruction of the Trade of this Kingdom; to which Treaty may justly be ascribed the Dangers which now threaten both this Kingdom and the Peace of *Europe*."

Resolved, That the said Address be presented to his Majesty by the whole House.

Ordered, That such Members of this House as are of his Majesty's most honourable Privy-Council, do humbly know his Majesty's Pleasure when he will be attended by this House.

Ordered, That it be an Instruction to the Committee of the whole House, who are upon *Saturday* next to take into Consideration the State of the Nation, That they do take into further Consideration the Treaty of Partition.

Ordered, That a Committee be appointed to search the Journals of the House of Lords, what Proceedings are therein, with relation to the Treaty of Partition, and report the same to the House. (And a Committee was appointed accordingly.)

Mercurii, 26 *die Martii*, 1701.

Sir *Edward Seymour* reported from the Committee appointed to search the Journals of the House of Lords, what Proceedings are therein with relation to the Treaty of Partition, and report the same to the House, That they had searched the Journals of the House of Lords accordingly, and taken Copies thereof; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same were read, and are as followeth; *viz.*

(A Copy of the Lords Journal.)

Lunæ, 10 *die Martii*, 1700.

The House being moved, That a Day may be appointed for taking into Consideration the Treaties now lying before this House, it is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the said Treaties shall be taken into Consideration on *Wednesday* next at eleven o'Clock in the Forenoon.

Mercurii, 12 *die Martii*, 1700.

The Order being read for taking into Consideration the Treaties now lying before this House, the several Translations of Treaties were read, as follow; *viz.*

1. The Treaty of Defensive Alliance between *England* and *Holland*, *March* 3, 1677-8.
2. The Renewal of the Treaties between *England* and the States-General of the United Provinces, *August* 17, 1685.
3. The Renewal of the Treaties of Alliance between *England* and *Holland*, *August* 24, 1689.
4. Ratification of the Treaty of *Ryswick*.
5. Convention between *England*, *Sweden*, and *Holland*, *May* $\frac{4}{14}$, 1698.
6. Treaty between *England*, *Sweden*, and States General, in *January* $\frac{1698}{1700}$.
7. Separate Articles between *England*, *Sweden*, and *Holland*.
8. Ratification of the Treaty, *January* $\frac{13}{23}$, $\frac{1698}{1700}$.
9. The Ratification of the Separate Article.
10. The Ratification of the Secret Article.
11. The King's Declaration.
12. The Dauphin's Declaration.

After which the House came to this Agreement, That the Lord Chamberlain do humbly move his Majesty, That all Matters or Papers any way relating to the Negotiations of the Treaties be laid before this House.

Veneris, 14 *die Martii*, 1700.

The Order being read for taking into further Consideration the Treaties;

The House was acquainted, That Mr. *Yard* attended with the Papers as agreed on Yesterday; he was called in, and delivered the Papers following at the Table, and then withdrew.

1. *Copie du plein Pouvoir touchant Succession d' Espange*, January 2, $\frac{1699}{1700}$.
2. A Copy of the King's Warrant for affixing the Great Seal to the full Powers.
3. A Copy of the Ratification of Partition.
4. A Copy of the King's Ratification of the Separate and Secret Articles.
5. A Copy of the King's Warrant for affixing the Great Seal to the Treaty of Partition, Separate and Secret Articles.

(These Papers were all read by the Clerk.)

Lords Committees appointed to draw up and state the Fact as to the Treaty now in Debate, and all Things and Circumstances relating thereunto, and to draw an Address to be presented to his Majesty thereupon, and report to the House.

Dux *Devon* Dom. Seneschal'	Com. *Nottingham*,	Dom. *Wharton*,
	Com. *Rochester*,	Dom. *Mohun*,
Dux *Bolton*,	Com. *Abingdon*,	Dom. *Culpeper*,
Dux *Leeds*,	Com. *Marlborough*,	Dom. *Lexington*,
March. *Normanby*,	Com. *Romney*,	Dom. *Berkley*,
Com. *Peterborough*,	Com. *Oxford*,	Dom. *Craven*,
Com. *Stafford*,	Visc. *Weymouth*,	Dom. *Guilford*,
Com. *Thanet*,	Visc. *Longueville*,	Dom. *Godolphin*,
Com. *Kingston*,	Dom. *Willoughby*,	Dom. *Chalmondley*,
Com. *Burlington*,	Dom. *Lawar*,	Dom. *Herbert*,
Com. *Shaftsbury*,	Dom. *Ferrers*,	Dom. *Hallifax*.

Their Lordships, or any Five of them, to meet To-morrow at eleven of the Clock, in the Prince's Lodgings, near the House of Peers, and to adjourn as they please.

Sabbati, 15 *die Martii*.

The Earl of *Nottingham* reported from the Lords Committees appointed to draw up, and state the Facts, as to the Treaty now in Debate,

That the Committee had met, and thought it proper to set down such Facts as appeared to them, *viz.*

1. That by the Treaty of Partition, *Naples*, *Sicily*, &c. were to be given to the *Dauphin*.
2. That the Emperor was not a Party to this Treaty, though principally concerned.
3. That no Minister of the States-General met with the Plenipotentiaries of *England* and *France*, as were required by the Powers, at the making the Treaty in *London*.
4. That there were no Instructions in Writing to our Plenipotentiaries, though the Powers were unlimited, and that if there were verbal Orders given, yet it appears not to us they were considered in any Council.
5. That the Treaty, when perfected, was not considered in any Council before it was ratified.
6. That it appears, That the Warrant for Ratification was countersigned by one of the Plenipotentiaries.
7. That the Treaty was transacted and signed, and the Great Seal affixed to it during the sitting of a Parliament.

Then the House, upon Consideration of the first Head in the said Report, agreed to the same, with the Alterations following, *viz.*

Instead of *(given to) put into the Hands of.*

Then the second Head was read.

After Debate thereupon,

The Question was put, Whether this Paragraph shall stand?

It was resolved in the Negative.

Dissentient,

First, Because it is manifest by the Treaty itself, that the Matter of Fact is true.

Secondly, Because the Emperor, as we conceive, had been the most proper to have been treated with on this Occasion; for 'twas more prudent and safe to have treated with the Emperor to have restrained the Pretensions of *France*, than with *France* to lessen the Dominions of the House of *Austria*, which in its full Strength, and in Conjunction with the most considerable Powers in *Europe*, and with the Expence of more than Sixty Millions Sterling to our Share, was scarce able to withstand the Arms of *France*.

Thirdly, But admitting that the Emperor was not the most proper to be treated with; yet to prevent the Umbrage which might be taken by uniting too many Dominions under one Prince, especially such a Prince as without any Additions was formidable to all *Europe*, of all others the Emperor was the most improper to be left out of such a Treaty, for he was most concerned in it; and our Ministers could not, or at least did not, sufficiently support his Interests, or the just Balance of *Europe*: But, on the contrary, as we are informed by one Lord who signed this Treaty, it was concluded against the express Desire of the Emperor.

De Longueville,	*Normanby*,	*Leeds*,
Granville,	*Thanet*,	*Nottingham*,
Abingdon,	*Hereford*,	*Howard*,
Jeffreys,	*Weymouth*,	*Scarsdale*,
Guilford,	*Poulett*,	*Craven*.
Tho. Roffen,		

Third Head. That no Minister of the States-General met with the Plenipotentiaries of *England* and *France*, as were required by the Powers, at the making the Treaty in *London*.

After the Debate, the Question was put, Whether this Paragraph shall stand?

It was resolved in the Negative.

Dissentient,

First, Because the Truth of this Proposition is Reason enough for asserting it; and it must certainly be of fatal Consequence, if Ministers, without any Directions by Instructions in Writing, shall presume to act contrary to the very Commission that empowers them: And, in this Case, the Assistance of the *Dutch* Ministers was the more necessary, because the Emperor was no Party to this Treaty, and the States-General are more immediately concerned than we are to promote his Interests.

Secondly, But if this Treaty was concerted with the *Dutch* Ministers in 1699, before his Majesty's Return into *England*, as was asserted by one of the Lords who signed it afterwards in *London*;

1. This Treaty was made by those who had no Authority to transact it; for the Power was not granted by his Majesty till the second of *January* following.
2. As they acted without Power, so without Instructions too in Writing; which never was practised in any former Transaction abroad.

Lastly, We conceive, that neither of the foregoing Facts ought in Reason, or according to the Method of Parliament, to be ordered to be omitted;

omitted; becauſe, till the Committee had formed the Addreſs purſuant to the Order, 'twas impoſſible to know what Uſe would be made of thoſe Facts; for as they might have been improperly applied, and then would have been juſtly rejected, ſo there might have been ſo great Uſe made of them, and ſo oppoſite to the Deſign of the Houſe in the intended Addreſs, that it will be improper to omit them.

Leeds, *Craven*, *Jeffrys*
Howard, *Nottingham*, *De Longueville*,
Weymouth, *Hereford*, *Tho. Roſſen.*
Abbingdon, *Granville*,
Thanet, *Normanby*,

After Conſideration of the Report made from the Lords Committees, appointed to ſtate Matters of Fact upon the Treaty in Debate, and to draw an Addreſs thereupon, It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, that the Debate in the fourth Paragraph in the Report, ſhall be, and is hereby adjourned till *Monday* next, at Eleven of the Clock, and all the Lords ſummoned.

Lunæ, 17 *die Martii.*

The Order being read for reſuming the adjourned Debate, upon the fourth Paragraph in the Report from the Committee appointed to ſtate Matters of Fact, and draw an Addreſs to his Majeſty upon the Partition-Treaty;

Some Lords of the Council, having his Majeſty's Leave, were heard relating to the Treaty: And Mr. Secretary *Vernon* being mentioned, a Meſſage was ſent to the Houſe of Commons by Sir *John Franklin*, and Sir *Lacon William Child*, to deſire, that they will give Leave to Mr. Secretary *Vernon*, a Member of their Houſe, to come to a Committee of the Lords now ſitting in the Prince's Lodgings, to give an Account of ſome Matters relating to the Treaty of Partition, which their Lordſhips have now under their Conſideration.

Ordered, That it be the ſame Committee as ſtated the Matters of Fact.

After ſome Time, the Meſſengers ſent to the Houſe of Commons returned this Anſwer:

That the Commons have given Leave to Mr. Secretary *Vernon* to attend the Committee as deſired, if he thinks fit.

Hereupon the Houſe was adjourned during Pleaſure, and the Lords went to the Committee, which being ended, the Houſe was reſumed, and the Earl of *Nottingham* gave the Houſe an Account, that the Lords had been at the Committee, and heard Mr. Secretary *Vernon* to the Treaty of Partition.

Then after reading the fourth Paragraph, or Matter of Fact reported from the Committee, and Debate thereupon, the Houſe agreed as follows:

Whatever verbal Orders or Inſtructions were given, yet it appears not to us, that the Draught of the Treaty, when perfected, was conſidered at any Council when the King was preſent, or that it was adviſed or approved by any Council, or Committee of Council.

Ordered, By the Lords Spiritual and Temporal in Parliament aſſembled, That the further Conſideration of Matters of Fact in the tranſacting the Partition-Treaty, ſhall be adjourned till To-Morrow at Eleven o'Clock.

Martis, 18 *die Martii.*

The Houſe went into Debate, purſuant to the Order Yeſterday, concerning the Treaty of Partition; And it being propoſed,

That it appears that there were Powers dated the firſt of *July* to treat with the Emperor, the *Dutch* and *French* Miniſters, for ſecuring the mutual Friendſhip, upon Terms moſt ſuitable to the Circumſtances at that Time; and we are informed, that accordingly there was ſome Progreſs made in that Negotiation: But afterwards there were new Powers granted the firſt of *January*, to treat with the *French* and *Dutch* Miniſters only, and the Treaty for the Partition of the *Spaniſh* Monarchy was concluded without the Emperor.

And after Debate thereupon,

This Queſtion was put, Whether the ſaid Propoſal ſhall go to the Committee to be one of the Heads for the Addreſs?

It was reſolved in the Negative.

Diſſentient,

Normanby, *Nottingham*, *Abingdon*,
Granville, *Weymouth*, *Guilford.*

Then it was farther propoſed,

That it appears, That the *French* King's Acceptance of the Will of the King of *Spain*, is a manifeſt Violation of the Treaty; and humbly to adviſe the King, That in all future Treaties with the *French* King, his Majeſty do proceed with ſuch Caution as may carry along with it a real Security.

After Debate thereupon,

This Queſtion was put, Whether the ſaid Propoſal ſhould go to the Committee to be one of the Heads for the Addreſs?

It was reſolved in the Affirmative.

Diſſentient,

1. Becauſe it may be conſtrued to be an Approbation of the Treaty; which, as we conceive, was not intended by the Houſe.

2. Becauſe 'tis impoſſible to know the full Meaning and Extent of real Security.

Normanby, *Nottingham*, *Rocheſter*,
Abingdon, *Granville* *Weymouth.*
Guilford, *Godolphin*,

The Lord Chamberlain acquainted the Houſe, That he had a Meſſage from his Majeſty in Writing, which was read by the Lord-Keeper, as followeth:

WILLIAM R.

" HIS Majeſty having directed Mr. *Stanhope*, his Envoy Extraordinary, and Plenipotentiary at the *Hague*, to enter into Negotiations " in Concert with the *States General of the United Provinces*, and other Potentates, for the mutual Security of *England* and *Holland*, and the Preſervation of the Peace of *Europe:* And the ſaid Mr. *Stanhope* having " tranſmitted to his Majeſty Copies of his Demands, made by himſelf " and the Deputies of the *States*, upon that Subject, to the *French* Ambaſſador there, his Majeſty has thought fit to communicate the ſame " to the Houſe of Lords, it being his Majeſty's gracious Intention to acquaint them, from Time to Time, with the State and Progreſs of thoſe " Negotiations."

Kenſington, *March* 17, 1701-2.

1. The Propoſals made to the *French* Ambaſſador by Mr. *Stanhope* were read.

2. Tranſlation of the Reſolution of the States General for treating with Monſieur *D'Avaux*, the two-and-twentieth of *March*, 1701-2.

Jovis, 20 *die Martii.*

The Earl of *Nottingham* reported from the Lords Committees, appointed to ſtate Matter of Fact upon the Treaty of Partition, and to draw an Addreſs thereupon, That the Committee had accordingly drawn an Addreſs to be preſented to his Majeſty; which was read, and with one Amendment, agreed to as follows, *viz.*

" WE your Majeſty's moſt dutiful and loyal Subjects, the Lords " Spiritual and Temporal in Parliament aſſembled, having read " and conſidered the Treaty, 21 *Feb.* 3 *Martii*, 1700, made with the " *French* King, together with the ſeparate and ſecret Articles which your " Majeſty has been pleaſed to communicate to us, do with all Humility " repreſent to your Majeſty, That to our great Sorrow we find the Matters thereof to have been of very ill Conſequence to the Peace and Safety of *Europe:* For beſides the Occaſion it may have given to the late " King of *Spain* to have made his Will in Favour of the Duke of *Anjou*, " if this Treaty had taken Effect, the Prejudice to your Majeſty and " your Subjects, and indeed to all *Europe*, by the Addition of *Sicily*, " *Naples*, ſeveral Ports in the *Mediterranean*, the Province of *Guipuſcoa*, " and the Dutchy of *Lorrain*, had been not only very great, but contrary " to the Pretence of the Treaty itſelf, which was, to prevent any Umbrage which might be taken by uniting too many States and Dominions under one Head.

" And by all the Informations we have yet had of the Progreſs of this " fatal Treaty, we cannot find, that the verbal Orders and Inſtructions, " if any were given to your Majeſty's Plenipotentiaries, were ever conſidered in any of your Majeſty's Councils, or that the Draught of this " Treaty was ever laid before your Majeſty at any Meeting of your " Council, much leſs that it was adviſed or approved by any Council, " or Committee of Council: We therefore think ourſelves obliged in " Duty to your Majeſty, and Juſtice to our Country, moſt humbly to " beſeech your Majeſty, that for the future your Majeſty will be pleaſed " to require and admit, in all Matters of Importance, the Advice of your " natural-born Subjects, whoſe known Probity and Fortunes may give " your Majeſty and your People a juſt Aſſurance of their Fidelity in your " Service; and in order hereunto, to conſtitute a Council of ſuch Perſons, to whom your Majeſty may be pleaſed to impart all Affairs both " at Home and Abroad, which may any Way concern your Majeſty and " your Dominions; for as Intereſt and natural Affection to their Country, will incline them to wiſh the Welfare and Proſperity of it much " more than others who have not ſuch Ties upon them; and as their Experience and Knowledge of their Country will alſo render them more " capable than Strangers of adviſing your Majeſty in the true Intereſts of " it; ſo we are very confident, that after ſuch large and repeated Demonſtrations of your Subjects Duty and Affections, your Majeſty cannot " doubt of their Zeal in your Service, nor want the Knowledge of Perſons fit to be employed in all your moſt ſecret and arduous Affairs.

" And ſince it appears, that the *French* King's accepting of the King " of *Spain*'s Will is a manifeſt Violation of this Treaty, we humbly adviſe your Majeſty, in future Treaties with the *French* King, to proceed " with ſuch Caution, as may carry along with it a real Security."

It being propoſed to ſend to the Houſe of Commons for their Concurrence to the ſaid Addreſs,

And Debate thereupon;

The Queſtion was put, Whether this Addreſs ſhall be communicated to the Houſe of Commons for their Concurrence?

It was reſolved in the Negative.

Diſſentient,

Rocheſter, *W. Oxon*, *Devonſhire.*

1. Becauſe we conceive, that the laſt Clauſe in the Addreſs does neceſſarily imply a War, and that a very long one, by reaſon of the Extent unintelligible (at leaſt to us) of a *real Security*, and the great Improbability of obtaining any Terms of that Kind; and ſince this neceſſarily implies great Supplies, which cannot be granted without the Houſe of Commons, we think their Concurrence in this Addreſs abſolutely neceſſary; and that 'tis very improper for us to deſire that of the King, which, for want of ſuch Concurrence of the Commons, we conceive his Majeſty will not think fit or prudent for him to grant.

2. We conceive all the other Parts of the Addreſs very fit to be communicated to the Houſe of Commons; for upon the Succeſs of it depends the future Happineſs of this Nation, and as we cannot doubt of the Readineſs of the Commons to join in any proper Meaſures towards it, ſo we think their Concurrence in it would highly contribute towards the obtaining a gracious Anſwer from his Majeſty; and we cannot but think it reaſonable, that the Advice of the whole Nation aſſembled in Parliament, ſhould be made known to his Majeſty upon this Occaſion.

3. Having deſired the Houſe of Commons to permit Mr. Secretary *Vernon*, a Member of their Houſe, to come to the Committee of Lords, to inform them of ſome Matters relating to this Treaty, we apprehend that the Houſe of Commons may think it extraordinary, and not ſuitable to the good Correſpondence which is highly neceſſary between the two Houſes, not to acquaint them with the Things which have come to our Knowledge, partly by the Information of their own Member.

4. And having been otherwiſe informed of ſome Tranſactions relating to this Treaty, between the Earl of *Portland*, and Mr. Secretary *Vernon*,

Vernon, by Letters, of which we have not had a full Account, we think it may be very uſeful to the Publick to communicate this Addreſs to the Commons, who have better Opportunity than we have had of enquiring into this Matter, which ſeems to be yet in the Dark, and which their own Member may help to explain to them.

Leeds,	*Kent*,	*Carnarvon*,
Normanby,	*H. London*,	*Weymouth*,
De Longueville,	*Bath*,	*Jeffreys*,
Nottingham,	*Abingdon*,	*Hunſdon*,
Granville,	*Guilford*,	*N. Dureſme*,
Craven,	*Willoughby*,	*Tho. Roſſen*,
Thanet,	*Scarſdale*,	*Poulett*.

Ordered, That the whole Houſe do attend His Majeſty with the Addreſs.

Ordered, By the Lords Spiritual and Temporal in Parliament aſſembled, That the Lords with white Staves do attend His Majeſty, humbly to know what Time His Majeſty will be pleaſed to appoint for this Houſe to attend him with the Addreſs.

Martis, 25 *die Martii*.

The Lord-Keeper reported His Majeſty's Anſwer to the ſaid Addreſs.

My LORDS,

"THIS Addreſs contains Matters of very great Moment: I will al-
"ways take Care, that all Treaties I make ſhall be for the Honour
"and Safety of *England*."

Ordered, That the foregoing Report of the Lords Journal do lie upon the Table to be peruſed by the Members.

Sabbati, 29 *die Martii*, 1701.

The Order of the Day being read for the Houſe to reſolve itſelf into a Committee of the whole Houſe, to conſider of the State of the Nation, and of the Treaty of Partition;

Ordered, That the Treaty of Partition, and the Report from the Committee appointed to inſpect the Journals of the Houſe of Lords what Proceedings were therein relating to the Treaty of Partition, be referred to the Conſideration of the ſaid Committee of the whole Houſe.

Then the Houſe reſolved itſelf into the ſaid Committee, and after ſome Time ſpent therein, *Mr. Speaker* reſumed the Chair; Col. *Granville* reported from the ſaid Committee, That they had come to a Reſolution, which they had directed him to report when the Houſe will pleaſe to receive the ſame.

Ordered, That the Report be made upon *Tueſday* Morning next.

Martis, 1 *die Aprilis*, 1701.

Colonel *Granville* (according to Order) reported from the Committee of the whole Houſe, to whom it was referred to conſider of the State of the Nation, and of the Treaty of Partition, the Reſolution, which they had directed him to report to the Houſe, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the ſame was read, and agreed unto by the Houſe, and is as followeth, *viz.*

Reſolved, That *William* Earl of *Portland*, by negotiating and concluding the Treaty of Partition (which was deſtructive to the Trade of this Kingdom, and dangerous to the Peace of *Europe*) is guilty of an High Crime and Miſdemeanour.

Reſolved, That *William* Earl of *Portland* be impeached of High Crimes and Miſdemeanours.

Ordered, That Sir *John Leveſon Gower* do go up to the Lords, and at their Bar, in the Name of the Houſe of Commons, and of all the Commons of *England*, impeach *William* Earl of *Portland* of High Crimes and Miſdemeanours, and acquaint them, That this Houſe will, in due Time, exhibit particular Articles againſt him, and make good the ſame.

Ordered, That a Committee be appointed to draw up Articles of Impeachment againſt *William* Earl of *Portland*.

(And a Committee was accordingly appointed).

And Sir *John Leveſon Gower* went up to the Lords with the ſaid Impeachment.

Sir *John Leveſon Gower* reported, That he had been at the Lords (according to Order) and at their Bar had impeached *William* Earl of *Portland* of High Crimes and Miſdemeanours, and acquainted them, That this Houſe will, in due Time, exhibit particular Articles againſt him, and make good the ſame.

Reſolved, That a Conference be deſired with the Lords, upon Matters relating to the Treaty of Partition.

Ordered, That Mr. *St. John* do go to the Lords, and deſire the ſaid Conference.

Mr. *St. John* reported, That he having (according to Order) been at the Lords to deſire a Conference, the Lords do agree to a Conference accordingly To-morrow at One a-Clock, in the Painted Chamber.

Ordered, That the Committee who are appointed to draw up the Articles of Impeachment, do manage the ſaid Conference.

Mercurii, 2 *die Aprilis*, 1701.

Ordered, That the Managers appointed for the Conference with the Lords, do withdraw into the Speaker's Chamber, and draw up what is to be offered at the ſaid Conference.

Colonel *Granville* reported, That the Managers appointed to withdraw into the Speaker's Chamber, and draw up what is to be offered at the Conference with the Lords, had drawn up the ſame accordingly, and directed him to report the ſame to the Houſe, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the ſame was read, and agreed unto by the Houſe, and is as followeth, *viz.*

"IT appearing by your Lordſhips Journal, That your Lordſhips have
"received Information of ſome Tranſactions between the Earl of
"*Portland* and Mr. Secretary *Vernon*, relating to the Partition of the
"*Spaniſh* Monarchy, the Commons having the ſaid Matter under their
"Conſideration, deſire your Lordſhips will be pleaſed to communicate to
"the Commons what Informations your Lordſhips have had of any
"Tranſactions relating to any Negotiations or Treaties of Partition of
"the *Spaniſh* Monarchy by Letters, or otherwiſe: And the Commons
"are fully aſſured, That your Lordſhips will readily concur in aſſiſting
"them in this Inquiry, which they conceive abſolutely neceſſary for
"the Safety and Honour of this Kingdom, and the Preſervation of the
"Peace of *Europe*."

Then the Managers went to the Conference, and being returned, Colonel *Granville* reported, That they had attended the Conference, and offered what the Houſe had directed.

Martis, 8 *die Aprilis*, 1701.

Reſolved, That an humble Addreſs be preſented to his Majeſty, That he will pleaſe to give Order, That the Grand Alliance of One thouſand ſix hundred eighty-nine, with the two Secret Articles, may be laid before this Houſe.

Reſolved, That an humble Addreſs be preſented to His Majeſty, That he will pleaſe to give Order, That the Treaty made in the Year One thouſand ſix hundred ninety-eight, with relation to the Electoral Prince of *Bavaria*'s having Part of the Territories of the Crown of *Spain*, may be laid before this Houſe.

Reſolved, That an humble Addreſs be preſented to his Majeſty, That he will pleaſe to give Order, That the Powers and Inſtructions for making the late Treaties may be laid before this Houſe.

Ordered, That the ſaid Addreſſes be preſented to His Majeſty by ſuch Members of this Houſe as are of His Majeſty's moſt Honourable Privy-Council.

Mercurii, 9 *die Aprilis*, 1701.

Mr. Secretary *Vernon* acquainted the Houſe, That their Addreſs having been preſented to His Majeſty, That His Majeſty would be pleaſed to give Order, that the Grand Alliance of One thouſand ſix hundred eighty-nine, and the Treaty of One thouſand ſix hundred ninety-eight, and alſo the Powers and Inſtructions for making the late Treaties, might be laid before this Houſe; His Majeſty had been pleaſed to give Order for the Treaties and Powers to be laid before this Houſe; but that there were no Inſtructions for either of thoſe Treaties in Writing.

A Meſſage from the Lords by Sir Richard Holford, *and Mr.* Pitt.

Mr. Speaker,

"The Lords do deſire a Conference with this Houſe To-morrow at
"One a-Clock in the Painted Chamber, upon the Subject-Matter of
"the laſt Conference."

To which the Houſe agreed: And the Meſſengers were called in, and *Mr. Speaker* acquainted them therewith.

Jovis, 10 *die Aprilis*, 1701.

Ordered, That the Members who managed the laſt Conference with the Lords, do manage the Conference this Day.

And the Managers went to the Conference, and being returned, Colonel *Granville* reported, That the Managers appointed had attended the Conference; That, on the Part of the Lords, the Lord Marquis of *Normanby* managed the Conference, and acquainted them, That the Lords had ordered to be laid before this Houſe Two Powers, and alſo a Paper, which (although not ſign'd by the Earl of *Portland*) yet was laid before the Lords by him, and that there being ſome Queſtions aſked him by the Lords, there were his Anſwers alſo; which Powers and Paper Colonel *Granville* read in his Place, and afterwards delivered in at the Clerk's Table, where the ſame were read, and are as follow, *viz.*

GULIELMUS R.

GULIELMUS Tertius Dei Gratiâ Magnæ Britanniæ, Franciæ, & Hiberniæ Rex, Fidei Defenſor, &c. Omnibus ad quos præſentes Literæ pervenerint Salutem. Quùm ad conſervandam univerſæ Europæ Quietem plurimum conducere arbitramur, ut de efficaciſſimis Mediis quibus redintegratæ Pacis Beneficia confirmari ac conſervari poſſint ſedulo & opportunè provideatur, neq; ullum Publicæ Tranquillitati immutandæ periculum evidentius imminere, quam ſi eveniat ut Rex Catholicus, nullam Sobolem ſuperſtitem relinquens, moriatur, (illum vero Regem diu ſupereſſe exoptamus) ac proinde Principes, illam Succeſſionem non tam jure quam viribus vindicantes, crudeliſſimum Bellum per tot florentia Regna, Provincias, Ditioneſq; excitent; quùmq; Nobis ſpes maxima eluceſcat, hæc Bella averti poſſe, atq; omnia amicè & feliciter componi, ſi de cujuſq; Rationibus & Commodis in medium providè conſuleretur: Quùm Nobis deniq; innoteſcat, Sereniſſimum Principem & Dominum Dominum Ludovicum Decimum Quartum, Regem Chriſtianiſſimum, ac Præpotentes Dominos Dominos Ordines Generales Fœderatarum Belgii Provinciarum, in eodem prorſus Animo eſſe. Sciatis igitur, Quod Nos fide prudentiâ ac in Rebus gerendis uſu perfidelis & perquam dilecti Conſanguinei & Conſiliarii noſtri Gulielmi Comitis Portlandiæ, Vicecomitis de Cirenceſter, Baronis de Woodſtock, Ordinis Noſtri Periſcelidis Equitis; necnon perfidelis & perquam dilecti Conſanguinei & Conſiliarii Noſtri Edwardi Comitis Jerſey, unius Primariorum Secretariorum Noſtrorum Status; plurimum confiſi, eoſdem fecimus, ordinavimus & deputavimus, ac per Præſentes facimus, ordinamus & deputamus veros & indubitatos Commiſſarios & Plenipotentiarios Noſtros, dantes & concedentes iiſdem aut eorum alteri plenam & omnimodam Poteſtatem atq; Authoritatem, pariter & Mandatum generale & ſpeciale, ut pro Nobis & Noſtro Nomine, cum præfatorum Sereniſſimi Regis Chriſtianiſſimi, ac Dominorum Ordinum Generalium Fœderatarum Belgii Provinciarum Commiſſario ac Plenipotentiario, ſive Commiſſariis ac Plenipotentiariis, de & ſuper Præmiſſis conveniant, colloquantur & tractent, eaq; omnia perficiant & concludant, quæ ad Bella de Succeſſione Hiſpanica avertenda, ſtabiliendamq; Europæ Pacem omni meliori modo faciant & conducant; Promittentes bona fide & in Verbo Regio, Nos omnia & ſingula quæ à dictis Commiſſariis ac Plenipotentiariis Noſtris, vel eorum altero, vi Præſentium concluſa fuerint, grata, rata & firma habituros, nec contra eorum aliquid contraventuros, ſed eadem ſanctè & inviolabiliter obſervaturos. In quorum omnium majorem Fidem ac Robur, haſce Literas Manu Noſtrâ Regiâ ſignatas, Magno Noſtro Angliæ Sigillo muniri fecimus: Quæ dabantur in Palatio Noſtro apud Kenſington Die Secundo Menſis Januarii, Anno Domini $\frac{1699}{1700}$ Regniq; Noſtri Undecimo.

GULIELMUS R.

GULIELMUS Tertius Dei Gratiâ Magnæ Britanniæ, Franciæ & Hiberniæ Rex, Fidei Defenſor, &c. Omnibus & ſingulis ad quos præſentes Literæ pervenerint Salutem. Quùm ad conſervandam Quietem Publicam plurimum conducere arbitramur, ut de efficaciſſimis Mediis quibus redintegratæ Pacis Beneficia confirmari & augeri poſſint ſedulò & opportunè provideatur: Quùmq; Nobis innoteſcat Sereniſſimum Principem & Dominum Dominum Leopoldum Romanorum Imperatorem, tum Sereniſſimum Principem & Dominum Dominum Ludovicum Decimum Quartum Regem Chriſtianiſſimum, ac Præpotentes Dominos Dominos Ordines Generales Fœderatarum Belgii Provinciarum, in eo Animo eſſe, ut Conſilia ſua Nobiſcum invicem communicare, & de iis quæ ad mutuam Amicitiam firmius aſtringendam, quæq; præſentis temporis Rationibus maximè accommoda ſint in commune conſulere velint. Sciatis igitur, Quod Nos fide prudentiâ & in Rebus gerendis uſu perdilecti & perquam fidelis Conſanguinei & Conſiliarii Noſtri Gulielmi Comitis de Portland, Ordinis Noſtri Periſcelidis Equitis; ac Conſiliarii Noſtri Edwardi Comitis de Jerſey, unius Primariorum Secretariorum Noſtrorum Status, plurimum confiſi, eoſdem fecimus, ordinavimus ac deputavimus, ſicut per Præſentes facimus, ordinamus & deputamus, veros & indubitatos Commiſſarios & Deputatos Noſtros, dantes & concedentes iiſdem Commiſſariis & Deputatis Noſtris, aut eorum alteri, plenam & omnimodam Poteſtatem atq; Autoritatem, pariter & Mandatum generale ac ſpeciale, ut pro Nobis & Noſtro Nomine, cum præfatorum Sereniſſimi, Romanorum Imperatoris, Sereniſſimi Regis Chriſtianiſſimi, ac Dominorum Ordinum Generalium Fœderatarum Belgii Provinciarum Commiſſariis ac Deputatis, plenâ etiam Poteſtate munitis, de & ſuper Præmiſſis conveniant, colloquantur & tractent, eaq; omnia perficiant & concludant quæ ad prædictum finem omni meliori modo faciant & conducant. Promittentes bonâ fide & in Verbo Regio, Nos omnia & ſingula quæ à dictis Commiſſariis Noſtris, aut ab eorum altero, vi Præſentium concluſa fuerint, grata, rata & firma habituros, nec contra eorum aliquid contraventuros aut contraveniri paſſuros. In quorum omnium majorem Fidem ac Robur, haſce Literas Manu Noſtrâ Regiâ ſignatas, Magno Noſtro Angliæ Sigillo muniri fecimus: Quæ dabantur in Palatio Noſtro apud Loo, Primo Die Menſis Julii Anno Domini Milleſimo ſexcenteſimo nonageſimo nono, Regniq; Noſtri Undecimo.

The Lord Portland's *Paper is as follows*, viz.

"AT the Beginning of the Summer of the Year 99, when I was in *Holland* at my Country Houſe, and when the King would have me be concerned in the negotiating of this Treaty with the Emperor, the *French* King, and the States; being very unwilling to meddle with Buſineſs again, from which I was retired; before I would engage myſelf, I adviſed with my Friends in *Holland*, and writ into *England* to Mr. Secretary *Vernon*, as my particular Friend, Whether it was adviſeable for me to engage in any Buſineſs again? To which Mr. *Vernon* anſwered in Subſtance, That this would not engage me but for a little while; that I being upon the Place, and generally acquainted with the Foreign Miniſters, it would be eaſier for the King, and properer for me to be employed in it than any body elſe, that muſt be otherwiſe ſent for on purpoſe."

The Earl of *Portland* being deſired by the Lord *Somers*, with the Leave of the Houſe, to declare if he pleaſed, Whether the Lord *Somers*'s Name was mentioned in the Letter he received from Mr. Secretary *Vernon*;

The Earl of *Portland* declared, That if he had remembered any ſuch thing in the Letter, and had not inſerted it in the Paper which he had delivered to the Houſe, he ſhould have thought he had deceived the Houſe.

Ordered, That the Conſideration of the ſaid Report be adjourned till To-morrow morning.

Veneris, 11 *die Aprilis*, 1701.

Mr. Secretary *Vernon* preſented to the Houſe (purſuant to their Addreſs to his Majeſty) ſeveral Treaties and Tranſlations of them, and of the Powers for them, and a Schedule of them;

And the Schedule was read.

Mr. Secretary *Hedges* preſented to the Houſe (purſuant to their Addreſs to His Majeſty) the Tranſlation of the Treaty between the Emperor and the States-General, called the Grand Alliance, with the Separate Articles, dated *May* 12, 1689, and acquainted the Houſe, That he had the Original in his Cuſtody for the Service of the Houſe.

The Title of the ſaid Treaty was read.

Then the Report of the Conference with the Lords Yeſterday was read.

Ordered, That Mr. Secretary *Vernon* do lay before this Houſe all the Letters and Copies of Letters which have paſſed between himſelf and the Earl of *Portland* in the Years 1698, 1699, or at any other Time, with relation to any Treaty concerning the Partition of the *Spaniſh* Dominions.

Ordered, That the ſaid Letters and Copies of Letters be laid before this Houſe To-morrow Morning.

Sabbati, 12 *die Aprilis*, 1701.

Mr. Secretary *Vernon* (according to Order) preſented to the Houſe the Letters and Copies of Letters between him and the Earl of *Portland*, relating to the Treaty of Partition, with a Liſt of them;

And the Liſt was read.

Ordered, That a Committee be appointed to tranſlate the ſaid Letters, and report the ſame to the Houſe; and a Committee was appointed accordingly, and they are to ſit *de die in diem*.

Lunæ, 14 *die Aprilis*, 1701.

Sir *Godfrey Copley* reported from the Committee appointed to tranſlate the Letters between Mr. Secretary *Vernon* and the Earl of *Portland*, relating to the Treaty for the Partition of the *Spaniſh* Dominions, That they had tranſlated them accordingly, and he delivered them in at the Clerk's Table, where the ſame, and the Copies of the Letters ſent by Mr. Secretary *Vernon* to the Earl of *Portland*, were read (all of them dated in the Year 1698).

And the Treaty in the Year 1698, with the Secret and Separate Articles: And alſo,

The Treaty called the Grand Alliance, with the Separate Articles, dated *May* 12, 1689, were read.

Ordered, That the Serjeant do go with the Mace into *Weſtminſter-Hall*, and the *Court of Requeſts*, and Places adjacent, and ſummon the Members there to attend the Service of the Houſe immediately.

And he went accordingly;

And being returned;

And a Debate being in the Houſe touching the Lord *Somers*,

The Houſe was informed, That the Lord *Somers* had heard, that the Houſe was upon a Debate concerning him, and that he deſired he might be admitted in, and heard.

Reſolved, That the Lord *Somers* be admitted in, and heard.

Ordered, That Candles be brought in;

(*And Candles were brought in accordingly.*)

Then a Chair was ſet by the Serjeant, a little within the Bar on the left Hand coming in; and the Serjeant had Directions to acquaint the Lord *Somers*, That he might come in; and the Door being opened, his Lordſhip came in, and *Mr. Speaker* acquainted his Lordſhip, That he might repoſe himſelf in a Chair provided for him; and his Lordſhip was heard what he had to offer to the Houſe: And after his Lordſhip withdrew, the Houſe came to this Reſolution;

Reſolved, That *John* Lord *Somers*, by adviſing His Majeſty in the Year One thouſand ſix hundred ninety-eight to the Treaty for Partition of the *Spaniſh* Monarchy, whereby large Territories of the King of *Spain*'s Dominions were to be delivered up to *France*, is guilty of a High Crime and Miſdeameanour.

Reſolved, That *John* Lord *Somers* be impeached of High Crimes and Miſdemeanours.

Ordered, That Mr. *Harcourt* do go up to the Lords, and at their Bar, in the Name of the Houſe of Commons, and of all the Commons of *England*, impeach *John* Lord *Somers* of High Crimes and Miſdemeanours; and acquaint them, That this Houſe will, in due Time, exhibit particular Articles againſt him, and make good the ſame.

Reſolved, That *Edward* Earl of *Orford*, by adviſing His Majeſty in the Year One Thouſand ſix hundred ninety-eight to the Treaty of Partition of the *Spaniſh* Monarchy, whereby large Territories of the King of *Spain*'s Dominions were to be delivered up to *France*, is guilty of a High Crime and Miſdemeanour.

Reſolved, That *Edward* Earl of *Orford* be impeached of High Crimes and Miſdemeanours.

Ordered, That Colonel *Byerly* do go up to the Lords, and at their Bar, in the Name of the Houſe of Commons, and of all the Commons of *England*, impeach *Edward* Earl of *Orford* of High Crimes and Miſdemeanours; and acquaint them, That this Houſe will, in due Time, exhibit particular Articles againſt him, and make good the ſame.

Reſolved, That *Charles* Lord *Halifax*, by adviſing His Majeſty in the Year One thouſand ſix hundred ninety-eight to the Treaty of Partition of the *Spaniſh* Monarchy, whereby large Territories of the King of *Spain*'s Dominions were to be delivered up to *France*, is guilty of a High Crime and Miſdemeanour.

Reſolved, That *Charles* Lord *Halifax* be impeached of High Crimes and Miſdemeanours.

Ordered, That Mr. *Bruges* do go to the Lords, and at their Bar, in the Name of the Houſe of Commons, and of all the Commons of *England*, impeach *Charles* Lord *Halifax* of High Crimes and Miſdemeanours; and acquaint them, That this Houſe will, in due Time, exhibit particular Articles againſt him, and make good the ſame.

Martis, 15 *die Aprilis*, 1701.

Mr. *Harcourt* reported, That he had (according to Order) been at the Lords, and in the Name of this Houſe, and of all the Commons of *England*, impeached *John* Lord *Somers* of High Crimes and Miſdemeanours; and acquainted the Lords, That this Houſe will, in due Time, exhibit particular Articles againſt him, and make good the ſame.

Colonel *Byerly* reported, That he had (according to Order) been at the Lords, and impeached *Edward* Earl of *Orford* of High Crimes and Miſdemeanours; and acquainted the Lords, That this Houſe will, in due Time, exhibit particular Articles againſt him, and make good the ſame.

Mr. *Bruges* reported, That he had (according to Order) been at the Lords, and impeached *Charles* Lord *Halifax* of High Crimes and Miſdemeanours; and acquainted the Lords, That this Houſe will, in due Time, exhibit particular Articles againſt him, and make good the ſame.

Ordered, That it be referred to the Committee (appointed to draw up Articles of Impeachment againſt *William* Earl of *Portland*), to draw up Articles of Impeachment alſo againſt the ſaid *John* Lord *Somers*, *Edward* Earl of *Orford*, and *Charles* Lord *Halifax*; and that they do ſit *de die in diem*.

Ordered, That the Letters, and Copies of the Letters preſented to the Houſe by Mr. Secretary *Vernon*, relating to the Partition-Treaty, and the Tranſlation of the ſaid Letters, be referred to the Conſideration of the ſaid Committee.

A Copy of the Letter from the Lord *Somers* to His Majeſty (which his Lordſhip delivered in to the Houſe Yeſterday) dated the twenty-eighth of *Auguſt*, One thouſand ſix hundred ninety-eight, was read.

Ordered, That the ſaid Copy of the ſaid Letter be referred to the Conſideration of the ſaid Committee.

Ordered, That Mr. *Bruges* and Mr. *How* do withdraw into the Speaker's Chamber, and tranſlate a Letter from His Majeſty to the Lord *Somers*, dated *Auguſt* $\frac{15}{25}$, One thouſand ſix hundred ninety-eight, which his Lordſhip alſo Yeſterday delivered in to the Houſe, and report the ſame to the Houſe.

Reſolved, That an humble Addreſs be preſented to His Majeſty, That he will be pleaſed to remove *John* Lord *Somers* from his Council and Preſence for ever.

Reſolved, That an humble Addreſs be preſented to His Majeſty, That he will be pleaſed to remove *Edward* Earl of *Orford* from his Council and Preſence for ever.

Reſolved, That an humble Addreſs be preſented to His Majeſty, That he will be pleaſed to remove *Charles* Lord *Halifax* from his Council and Preſence for ever.

Reſolved, That an humble Addreſs be preſented to His Majeſty, That he will be pleaſed to remove *William* Earl of *Portland* from his Council and Preſence for ever.

Reſolved,

Reſolved, That an Addreſs be drawn up upon the ſaid Reſolutions, and upon the Debate of the Houſe, to be preſented to his Majeſty.

Ordered, That it be referred to the Committee (who are to draw up the Articles of Impeachment) to draw up the ſaid Addreſs.

Reſolved, That the ſaid Addreſs be preſented to his Majeſty by the whole Houſe.

Mr. *Bruges* reported, That he and Mr. *How* had (according to Order) tranſlated the Letter from his Majeſty to the Lord *Somers*; and he delivered the ſame in at the Clerk's Table, where the ſaid Tranſlation was read.

Ordered, That the ſaid Letter and Tranſlation be referred to the Conſideration of the ſaid Committee.

Mercurii, 16 *die Aprilis*, 1701.

Mr. *Bromley* reported from the Committee, to whom it was referred to draw up an Addreſs upon the Reſolutions Yeſterday, and upon the Debate of the Houſe to be preſented to his Majeſty, That they had drawn up an Addreſs accordingly, which they had directed him to report to the Houſe; which he read in his Place, and afterwards delivered in at the Clerk's Table, where the ſame was read, and (with an Amendment) agreed unto by the ſaid Houſe, and is as follows; *viz.*

The Humble Addreſs of the Houſe of Commons to the KING.

Moſt Gracious Sovereign,

"WE Your Majeſty's moſt dutiful and loyal Subjects, the Commons in Parliament aſſembled, do humbly crave Leave to repreſent to Your Majeſty the great Satisfaction we have from our late Enquiry concerning the Treaty of Partition made in the Year One thouſand ſix hundred ninety-eight (on which the Treaty in One thouſand ſix hundred ninety-nine was founded), to ſee Your Majeſty's great Care of Your People and this Nation, in not entering into that Negotiation without the Advice of Your *Engliſh* Councillors: And finding that *John* Lord *Somers* (on whoſe Judgment Your Majeſty did chiefly rely in that ſo important Affair) did, in Concert with *Edward* Earl of *Orford*, and *Charles* Lord *Halifax*, adviſe Your Majeſty to enter into that Treaty of ſo dangerous Conſequence to the Trade and Welfare of this Nation; and who, to avoid the Cenſure which might juſtly be apprehended to fall on thoſe who adviſed the ſame, endeavoured to inſinuate, That Your Majeſty, without the Advice of Your Council, entered into that Treaty, and under Your Sacred Name to ſeek Protection for what themſelves had ſo adviſed; of which Treatment of Your Majeſty we cannot but have a juſt Reſentment. And that they may be no longer able to deceive Your Majeſty, and abuſe your People, we do humbly beſeech Your Majeſty, That you will be pleaſed to remove *John* Lord *Somers*, *Edward* Earl of *Orford*, and *Charles* Lord *Halifax*, from your Council and Preſence for ever; as alſo *William* Earl of *Portland*, who tranſacted thoſe Treaties, ſo unjuſt in their own Nature, and ſo fatal in their Conſequences to this Nation, and the Peace of *Europe*. And we humbly crave Leave, upon this Occaſion, to repeat our Aſſurances to Your Majeſty, That we will always ſtand by and ſupport Your Majeſty to the utmoſt of our Power, againſt all Your Enemies both at home and abroad."

Ordered, That ſuch Members of this Houſe as are of his Majeſty's moſt Honourable Privy-Council, do humbly know his Majeſty's Pleaſure, when he will be attended by this Houſe.

Mercurii, 23 *die Aprilis*, 1701.

Mr. Secretray *Hedges* acquainted the Houſe, That his Majeſty had been pleaſed to appoint to be attended by this Houſe this Afternoon at Five o'Clock at *Kenſington*.

Jovis, 24 *die Aprilis*, 1701.

Mr. Speaker reported, That he with the Houſe did Yeſterday preſent to His Majeſty their humble Addreſs; and that his Majeſty was pleaſed to give a moſt Gracious Anſwer thereunto as follows: *viz.*

Gentlemen,

"I AM willing to take all Occaſions of thanking you very heartily for the Aſſurances you have frequently given Me, and now repeat, of ſtanding by and ſupporting Me againſt all Our Enemies, both at home and abroad; towards which nothing, in My Opinion, can contribute ſo much, as a good Correſpondence between Me and My People; and therefore you may depend upon it, that I will employ none in My Service, but ſuch as ſhall be thought moſt likely to improve that mutual Truſt and Confidence between Us, which is ſo neceſſary in this Conjuncture, both for our own Security, and the Defence and Preſervation of Our Allies."

Reſolved, *Nemine contradicente*,

That the humble Thanks of this Houſe be given to his Majeſty, for his Majeſty's moſt Gracious Anſwer to the ſaid Addreſs.

Ordered, That ſuch Members of this Houſe as are of his Majeſty's moſt Honourable Privy-Council, do give his Majeſty the ſaid humble Thanks of this Houſe.

Martis, 29 *die Aprilis*, 1701.

Mr. Secretary *Hedges* reported to the Houſe, That their Thanks for his Majeſty's moſt Gracious Anſwer to their Addreſs had been preſented to his Majeſty; and that his Majeſty received the ſame very graciouſly.

Lunæ, 5 *die Maii*, 1701.

A Meſſage from the Lords by Sir *Robert Legard* and Sir *Richard Holford*.

Mr. Speaker,

"The Lords have commanded us to acquaint this Houſe, That they having on the firſt Day of *April* laſt ſent up to their Lordſhips an Impeachment againſt *William* Earl of *Portland*, of High Crimes and Miſdemeanours; and having alſo on the fifteenth Day of the ſame Month ſeverally impeached *John* Lord *Somers*, *Edward* Earl of *Orford*, and *Charles* Lord *Halifax*, of High Crimes and Miſdemeanours; their Lordſhips think themſelves obliged to put this Houſe in mind, That as yet no particular Articles have been exhibited againſt the ſaid Lords; which, after Impeachments have been ſo long depending, is due in Juſtice to the Perſons concerned, and agreeable to the Methods of Parliament in ſuch Caſes."

Reſolved, That an Anſwer be returned to the Lords, That the Articles againſt the Lords impeached are preparing, and in a ſhort time this Houſe will ſend them up to the Houſe of Lords.

And the Meſſengers were called in again, and *Mr. Speaker* acquainted them therewith.

Mercurii, 7 *die Maii*, 1701.

Sir *Bartholomew Shower* acquainted the Houſe, from the Committee appointed to draw up the Articles of Impeachment againſt the Lords impeached, That they had drawn up Articles of Impeachment accordingly againſt the Earl of *Orford*.

Ordered, That the ſaid Articles be reported To-morrow Morning.

Jovis, 8 *die Maii*, 1701.

Sir *Bartholomew Shower* (according to Order) reported, from the Committee to whom it was referred to draw up Articles of Impeachment againſt the Lords impeached, the Articles of Impeachment againſt *Edward* Earl of *Orford*, which he read in his Place, and afterwards delivered in at the Clerk's Table, where the ſame were once read.

Reſolved, That the ſaid Articles be read a ſecond time, Article by Article: And the ſame were ſeverally read a ſecond time; and upon the Queſtion ſeverally put thereupon, agreed unto by the Houſe to be the Articles of Impeachment againſt the Earl of *Orford*: And are as follow: *viz.*

Articles exhibited by the Knights, Citizens and Burgeſſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of England, *againſt* Edward *Earl of* Orford, *in maintenance of their Impeachment againſt him for High Crimes and Miſdemeanours.*

[Theſe Articles being printed in the *Proceedings of the Lords*, Vol. V. P. 340 to 344, are not here inſerted.]

Ordered, That the ſaid Articles of Impeachment be engroſſed.

Reſolved, That ſuch Witneſſes as are neceſſary to be made uſe of in relation to the ſaid Impeachment, have the Protection of this Houſe during their Attendance upon that Service.

Veneris, 9 *die Maii*, 1701.

The engroſſed Articles of Impeachment againſt *Edward* Earl of *Orford* were read.

Ordered, That the ſaid Articles of Impeachment be carried up to the Lords.

Ordered, That Colonel *Byerly* do carry the ſaid Articles of Impeachment to the Lords; and that he do alſo demand, That the Earl of *Orford* do give ſufficient Security to abide the Judgment of the Houſe of Lords.

Colonel *Byerly* reported, That he had (according to Order) carried up to the Lords the Articles of Impeachment againſt the Earl of *Orford*; and had demanded, That the ſaid Earl do give ſufficient Security to abide the Judgment of the Houſe of Lords.

Martis, 13 *die Maii*, 1701.

Reſolved, That a further humble Addreſs be preſented to His Majeſty, That He will be graciouſly pleaſed effectually to anſwer the Addreſs of this Houſe, for removing *John* Lord *Somers*, *Edward* Earl of *Orford*, *Charles* Lord *Halifax*, and *William* Earl of *Portland*, from his Council and Preſence for ever.

Ordered, That the ſaid Addreſs be preſented to his Majeſty, by ſuch Members of this Houſe as are of his Majeſty's moſt Honourable Privy-Council.

Jovis, 15 *die Maii*, 1701.

A Meſſage from the Lords by Sir *Richard Holford* and Mr. *Pitt*.

Mr. Speaker, We are commanded by the Lords to deliver to this Houſe the Anſwer of *Edward* Earl of *Orford*, to the Articles exhibited againſt him by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in the Name of themſelves, and of all the Commons of *England*, in maintenance of their Impeachment againſt the ſaid Earl for High Crimes and Miſdemeanours, ſuppoſed to be committed by him: And they delivered the ſame accordingly.

Ordered, That the ſaid Anſwer be read To-morrow Morning.

A Meſſage from the Lords by Sir *Richard Holford* and Mr. *Pitt*.

Mr. Speaker, The Lords have commanded us to acquaint this Houſe, That on the firſt Day of *April* laſt, this Houſe having ſent up to their Lordſhips an Impeachment againſt *William* Earl of *Portland*, for High Crimes and Miſdemeanours; and having alſo on the fifteenth Day of the ſame Month ſeverally impeached *John* Lord *Somers*, and *Charles* Lord *Halifax*, of High Crimes and Miſdemeanours; their Lordſhips think themſelves obliged to put this Houſe in mind, That as yet no particular Articles have been exhibited againſt the ſaid Lords; which, after Impeachments have been ſo long depending, is due in Juſtice to the Perſons concerned, and agreeable to the Methods of Parliament in ſuch Caſes.

Reſolved, That an Anſwer be returned to the Lords, That the Articles againſt *William* Earl of *Portland*, *John* Lord *Somers*, and *Charles* Lord *Halifax*, are preparing, and in a ſhort time this Houſe will ſend them up to the Houſe of Lords.

And the Meſſengers were called in again, and *Mr. Speaker* acquainted them therewith.

Veneris, 16 *die Maii*, 1701.

The Anſwer of *Edward* Earl of *Orford*, to the Articles of Impeachment againſt him was (according to Order) read, and is as follows; *viz.*

The Answer of Edward *Earl of* Orford, *to the Articles exhibited against him by the Knights, Citizens, and Burgesses in Parliament assembled, in the Name of themselves, and of all the Commons of* England, *in maintenance of their Impeachment against the said Earl for high Crimes and Misdemeanours, supposed to be committed by him.*

[This Answer being in the *Lords Proceedings*, Vol. V. Page 340—344, is here omitted.]

Ordered, That the said Answer be referred to the Committee appointed to draw up the Articles of Impeachment.

Ordered, That the said Committee do prepare a Replication to the said Answer; and that the said Committee do sit *de die in diem.*

Mr. *Harcourt* reported from the Committee appointed to draw up Articles of Impeachment, That they had drawn up Articles accordingly against *John* Lord *Somers*, Baron of *Evesham*, in maintenance of the Impeachment against him for high Crimes and Misdemeanors: And he read the same in his Place, and afterwards delivered them in at the Clerk's Table, where they were read, Article by Article; and upon the Question severally put thereupon, agreed unto by the House to be Articles of Impeachment of high Crimes and Misdemeanours against the said Lord *Somers*; and are as follow; *viz.*

Articles exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in the Name of themselves, and of all the Commons of England, *against* John *Lord* Somers, *Baron of* Evesham, *in maintenance of their Impeachment against him for high Crimes and Misdemeanours.*

[These Articles being in the *Lords Proceedings*, Vol. V. Page 345 to 356, are here omitted.]

Lunæ, 19 *die Maii*, 1701.

The engrossed Articles of Impeachment against *John* Lord *Somers* were read, and some Amendments were made by the House to one of them.

Ordered, That Mr. *Harcourt* do carry the said Articles up to the Lords.

Ordered, That Mr. *Harcourt* do also pray and demand, That the said *John* Lord *Somers* do give sufficient Security to abide the Judgment of the House of Lords.

Mr. *Harcourt* reported, That he had (according to Order) carried up to the Lords the Articles of Impeachment against *John* Lord *Somers*, and prayed and demanded that the said *John* Lord *Somers* do give sufficient Security to abide the Judgment of the House of Lords thereupon.

Mercurii, 21 *die Maii*, 1701.

A Message from the Lords by Sir *Robert Legard* and Mr. *Gery*.

Mr. Speaker. The Lords command us to acquaint this House, That their Lordships having been desired by the Earl of *Orford*, that a Day may be appointed for his speedy Trial, their Lordships finding no Issue joined by Replication of this House, think fit to give Notice thereof to this House.

They also command us to acquaint this House, That they having on the first Day of *April* last sent up their Lordshipships an Impeachment against *William* Earl of *Portland*, for high Crimes and Misdemeanours; and having also on the fifteenth Day of the same Month impeached *Charles* Lord *Halifax* for High Crimes and Misdemeanours; and there being as yet no particular Articles exhibited against the said Lords, their Lordships think themselves obliged to put this House in mind thereof; which, after Impeachments have so long depended, is a Hardship to the Persons concerned, and not agreeable to the usual Methods and Proceedings of Parliament in such Cases.

Resolved, That this House will send an Answer to the said Messages relating to the said Impeachments by Messengers of their own.

And the Messengers were called in, and *Mr. Speaker* acquainted them therewith.

Veneris, 23 *die Maii*, 1701.

Sir *Bartholomew Shower* reported from the Committee appointed to draw up the Articles of Impeachment, That they had considered of the Answer of *Edward* Earl of *Orford*, and had drawn up a Replication thereunto, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the same was read, and (with an Amendment) agreed unto by the House: And is a followeth; *viz.*

The Commons have considered the Answer of Edward *Earl of* Orford, *to the Articles of Impeachment exhibited against him by the Knights, Citizens, and Burgesses assembled in Parliament; and do aver their Charge of High Crimes and Misdemeanours against him to be true, and that the said Earl is guilty in such manner as he stands accused and impeached; and that the Commons will be ready to prove their Charge against him, at such convenient Time as shall be appointed for that Purpose.*

Ordered, That the said Replication be engrossed.

Sir *Bartholomew Shower* also reported from the said Committee, That they had directed him to move, that they may have Power to send for Persons, Papers, and Records, that shall be thought necessary to be used at the Trial of the said Earl; and to proceed in the most speedy and secret Way they can for the Advantage of the Prosecution.

Ordered, That the said Committee have Power to send for Persons, Papers, and Records, that shall be thought necessary to be used at the Trial of the said Earl; and to proceed in the most speedy and secret Way they can for the Advantage of the Prosecution.

Ordered, That the said Committee have Power to send some of their Number to examine Mr. *Samuel Shepherd* in the *Tower*.

Ordered, That the said Committee do consider of the Messages from the Lords relating to the Impeachments, and inspect the Precedents of Messages in relation to former Impeachments, and report the same to the House.

Sabbati, 24 *die Maii*, 1701.

A Message from the Lords by Sir *John Hoskins* and Sir *Robert Legard*.

Mr. Speaker. The Lords have commanded us to deliver to this House a Copy of the Answer of *John* Lord *Somers*, Baron of *Evesham*, to the Articles exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in the Name of themselves, and of all the Commons of *England*, in maintenance of their Impeachment against him for High Crimes and Misdemeanours, supposed to be by him committed; and they delivered the same in accordingly.

Lunæ, 26 *die Maii*, 1701.

Ordered, That the Answer of the Lord *Somers* to the Articles of Impeachment exhibited against him, be read To-morrow Morning at Eleven o'Clock.

Martis, 27 *die Maii*, 1701.

The Answer of the Lord *Somers* to the Articles of Impeachment exhibited against him was, according to Order, read, and is as follows; *viz.*

The Answer of John *Lord* Somers, *Baron of* Evesham, *to the Articles exhibited by the Knights, Citizens, and Burgesses in Parliament assembled, in the Name of themselves, and of all the Commons of* England, *in maintenance of their Impeachment against him for High Crimes and Misdemeanours supposed by him to be committed.*

[This Answer being in Vol. V. Page 345, *& seq.* is here omitted.]

Ordered, That the said Answer be referred to the Committee appointed to draw up the Articles of Impeachment.

Ordered, That it be referred to the said Committee to prepare a Replication thereunto.

The engrossed Replication to the Answer of the Earl of *Orford* to the Articles of Impeachment exhibited against him, was read.

Sabbati, 31 *die Maii*, 1701.

Mr. *Bromley* reported from the Committee to whom it was referred to draw up the Articles of Impeachment, and who were to consider of the Messages from the Lords relating to the Impeachments, and inspect the Precedents of Messages in relation to former Impeachments, and report the same to the House, That they had considered the said Messages, and inspected the Precedents; and that they had drawn up an Answer to the Message from the Lords the twenty-first instant, and had directed him to report the same to the House; which he read in his Place, and afterwards delivered in at the Table; where the same was read, and is as followeth; *viz.*

In Answer to your Lordships Message of the twenty-first instant, the Commons have prepared a Replication to the Earl of *Orford*'s Answer to the Articles of Impeachment of High Crimes and Misdemeanours, exhibited against him, and at present defer bringing it up to your Lordships, because in the Trial of the several Impeachments now depending, the Commons think it most proper, from the Nature of the Evidence that will be given at the said Trials, to begin with the Trial of the Impeachment of *John* Lord *Somers* of High Crimes and Misdemeanours.

As to your Lordships other Message, the Commons take it to be without Precedent, and unparliamentary; they, as Prosecutors, having a Liberty to exhibit their Articles of Impeachment in due time, of which they, who are to prepare them, are the proper Judges; and therefore, for your Lordships to assert, That having not yet exhibited particular Articles against *William* Earl of *Portland*, and *Charles* Lord *Halifax*, is a Hardiship to them, and not agreeable to the usual Methods and Proceedings in Parliament in such Cases, does, as they conceive, tend to the Breach of that good Correspondence betwixt the Two Houses, which ought to be mutually preserved.

Resolved, That the House doth agree, That the said Answer be returned to the Lords to their Lordships said Messages.

Ordered, That Mr. *Bromley* do carry the said Answer to the Lords.

Sir *Bartholomew Shower* also reported from the said Committee, That they had drawn up a Replication to the Answer of the Lord *Somers* to the Articles of Impeachment exhibited against him, which they had directed him to report to the House; which he read in his Place, and afterwards delivered in at the Clerk's Table, where the same was read and agreed unto by the House: And is as follows; *viz.*

The Commons have considered the Answer of *John* Lord *Somers* to the Articles of Impeachment exhibited against him by the Knights, Citizens, and Burgesses assembled in Parliament, for High Crimes and Misdemeanours. The said Commons do aver their Charge against the said Lord *Somers* to be true; and do say, that he is guilty in the Manner as he stands accused and impeached; and the said Commons will be ready to prove the same at such convenient Time as shall be appointed for that Purpose.

Ordered, That the said Replication be engrossed.

A Message from the Lords by Sir *John Hoskins* and Sir *Robert Legard*.

Mr. Speaker, The Lords have commanded us to acquaint this House, That their Lordships have appointed *Monday* the ninth Day of *June* next, for the Trial of *Edward* Earl of *Orford*, upon the Articles brought up against him by this House, in *Westminster-Hall*; and that this House may reply, if they think fit.

They also have commanded us to acquaint this House, That this House having, on the first Day of *April* last, sent up to their Lordships an Impeachment against *William* Earl of *Portland*, for High Crimes and Misdemeanours; and having also, on the fifteenth Day of the same Month, impeached *Charles* Lord *Halifax* for High Crimes and Misdemeanours; and there being as yet no particular Articles exhibited against the said Lords, their Lordships think themselves obliged to put this House in mind thereof; which, after Impeachments have so long depended, is a Hardship to the Persons concerned, and not agreeable to the usual Methods of Parliament in such Cases.

Resolved, That an Answer be returned to the said Message, relating to the appointing a Time for the Trial of the Earl of *Orford*, and to the Articles of Impeachment against the Earl of *Portland*, and Lord *Halifax*; and this House will return an Answer by Messengers of their own. And the Messengers were called in again, and *Mr. Speaker* acquainted them therewith.

Resolved,

Reſolved, That a Committee be appointed to conſider of the ſaid Meſſages, and to ſearch Precedents in relation thereunto, and to draw up an Anſwer to be returned to the Lords, and a Committee was accordingly appointed, and they to ſit *de die in diem*.

Mercurii, 4 *die Junii*, 1701.

A Meſſage from the Lords by Sir *Richard Holford* and Mr. *Pitt*.

Mr. Speaker, The Lords do think fit, upon Occaſion of the Meſſage from this Houſe of the thirty-firſt of *May*, to acquaint this Houſe, That having been deſired by the Lord *Somers*, that a Day may be appointed for his ſpeedy Trial; and their Lordſhips finding no Iſſue joined, by Replication of the Houſe of Commons, judge it proper to give them Notice thereof, that the Commons may reply, if they think fit; and at the ſame Time their Lordſhips let the Commons know, That they will proceed to the Trial of any of the impeached Lords whom the Commons ſhall be ready firſt to begin with, ſo as there may be no Occaſion taken from thence for any unreaſonable Delay in the Proſecution of any of them: And further to acquaint them, That having ſearched their own Journals, they do not find, that after a general Impeachment, there has ever been ſo long a Delay of bringing up the particular Articles of Impeachment, ſitting the Parliament: And therefore the Lords do think they had Reaſon to aſſert, That it was a Hardſhip to the two Lords concerned eſpecially after their Lordſhips had put the Houſe of Commons in mind of exhibiting ſuch Articles), and not agreeable to the uſual Proceedings in Parliament; and as the Lords do not controvert what Right the Commons may have of impeaching in general Terms, if they pleaſe; ſo the Lords, in whom the Judicature does intirely reſide, think themſelves obliged to aſſert, That the Right of limiting a convenient Time for bringing the particular Charge before them, for the avoiding Delay in Juſtice, is lodged in them.

The Lords hope the Commons on their Part will be as careful not to do any thing that may tend to the Interruption of the good Correſpondence between the Two Houſes, as the Lords ſhall ever be on their Part; and the beſt way to preſerve that is, for neither of the Two Houſes to exceed thoſe Limits which the Law and Cuſtom of Parliament have already eſtabliſhed.

Mr. *Harcourt*, according to Order, reported from the Committee, who were appointed to conſider of the Meſſage from the Lords of *Saturday* laſt, and ſearch Precedents in relation thereunto, and prepare an Anſwer to the ſaid Meſſage, That they had conſidered the ſaid Meſſage, and ſearched Precedents, and had drawn up an Anſwer accordingly, which they had directed him to report to the Houſe; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the ſame was read, and, with ſome Amendments, agreed unto by the Houſe, and is as followeth; *viz.*

The Commons, on Conſideration of your Lordſhips Meſſage to them of the thirty-firſt of *May*, concerning the Earl of *Orford*, think it their undoubted Right, when ſeveral Perſons ſtand impeached before your Lordſhips, to bring to Trial ſuch of them in the firſt Place as the Commons apprehend, from the Nature of the Evidence, ought firſt to be proceeded againſt, to the Intent all ſuch Offenders may in due Time be brought to Juſtice; and that no Day ought to be appointed by your Lordſhips for the Trial of any Impeachment by the Commons, without ſome previous Signification to your Lordſhips from the Commons, of their being ready to proceed thereon.

The Commons could not receive this Meſſage from your Lordſhips without the greateſt Surprize; your Lordſhips Proceedings in this Caſe being neither warranted by Precedents, nor (as the Commons conceive) conſiſtent with the Methods of Juſtice, or with Reaſon: Wherefore the Commons cannot agree to the Day appointed by your Lordſhips for the Trial of the Earl of *Orford*.

As to your Lordſhips Meſſage at the ſame Time, relating to the Earl of *Portland* and *Charles* Lord *Halifax*, the Commons take the ſame to be without Precedent, and unparliamentary; and conceive your Lordſhips frequent Repetition thereof in ſo ſhort a Time after the Commons had tranſmitted to your Lordſhips their Articles againſt two of the impeached Lords, and were daily preparing their Articles againſt the others, manifeſtly tends to the Delay of Juſtice, in obſtructing the Trials of the impeached Lords, by introducing Diſputes in Breach of that good Correſpondence between the Two Houſes, which ought inviolably to be preſerved.

Ordered, That Mr. *Harcourt* do carry the ſaid Anſwer to the Lords.

A Motion being made, and the Queſtion being put, That the engroſſed Replication to the Anſwer of the Lord *Somers* to the Articles of Impeachment exhibited againſt him, be now read;

It paſſed in the Negative.

Ordered, That the Meſſage from the Lords this Day touching the Impeachments, be taken into Conſideration To-morrow Morning.

Jovis, 5 *die Junii*, 1701.

The Houſe, according to Order, proceeded to take into Conſideration the Meſſage Yeſterday from the Lords relating to the Impeachments; and the ſame being read,

Reſolved, That a Conference be deſired with the Lords, upon the Subject Matter of the ſaid Meſſage.

Ordered, That the ſaid Meſſage be referred to the Committee appointed to draw up the Articles of Impeachment; and that they do draw up what is to be offered to the Lords at the ſaid Conference.

Veneris, 6 *die Junii*, 1701.

Mr. *Harcourt* reported from the Committee appointed to draw up Articles of Impeachment, and who were to conſider of the Meſſage from the Lords the fourth of *June* inſtant, and to draw up what ſhall be offered at a Conference with the Lords upon the Subject-Matter of the ſaid Meſſage, That they had drawn up the ſame accordingly, and had directed him to report the ſame to the Houſe; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the ſame was read, and agreed unto by the Houſe, and is as followeth; *viz.*

The Commons have deſired this Conference upon your Lordſhips Meſſage of the fourth of *June*, in order to preſerve a good Correſpondence with your Lordſhips; which will always be the Endeavour of the Commons, and is at this Time particularly neceſſary, in order to bring the impeached Lords to a ſpeedy Trial; and becauſe the Meſſages which your Lordſhips have thought fit to ſend to the Commons, and the Anſwers thereunto, ſeem not to tend towards expediting the Trials, which the Commons ſo much deſire, but may rather furniſh Matter of Diſpute between the Two Houſes, the Commons therefore chooſe to follow the Methods formerly uſed with good Succeſs upon the like Occaſion; and for the more ſpeedy and eaſy adjuſting and preventing any Differences, which have already happened, or may ariſe, previous to or upon theſe Trials, the Commons do propoſe to your Lordſhips, That a Committee of both Houſes be nominated to conſider of the moſt proper Ways and Methods of proceeding on Impeachments, according to the Uſage of Parliament.

Ordered, That Mr. *St. John* do go to the Lords, and deſire the ſaid Conference.

Mr. *St. John* reported, That he having (according to Order) been at the Lords to deſire a Conference, the Lords do agree to a Conference accordingly, and appoint the ſame preſently in the Painted Chamber.

Ordered, That the Committee who were appointed to draw up Articles of Impeachment do manage the ſaid Conference.

And the Managers went to the Conference; and being returned,

Mr. *Harcourt* reported, That they had been at the Conference, and delivered to the Lords what the Houſe had directed; and that the impeached Lords were not at the Conference.

Lunæ, 9 *die Junii*, 1701.

Mr. *Bruges* reported from the Committee, to whom it was referred to draw up Articles of Impeachment, That they had drawn up Articles accordingly againſt *Charles* Lord *Halifax*, which they had directed him to report to the Houſe; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the ſame was read, and agreed unto by the Houſe, and are as follow, *viz.*

Articles exhibited by the Knights, Citizens, and Burgeſſes in Parliament aſſembled, in Maintenance of their Impeachment, againſt Charles *Lord* Halifax, *of High Crimes and Miſdemeanours.*

[Theſe Articles being printed in Vol. V. Pag. 367. *& ſeq.* are here omitted.]

A Meſſage from the Lords, by Sir *Richard Holford* and Mr. *Gery*.

Mr. Speaker. We are commanded by the Lords to acquaint this Houſe, That *

" In Anſwer to the Meſſage of the Houſe of Commons of the fourth " inſtant, the Lords ſay, by their Meſſage ſent on the third, wherein " they declare themſelves ready to proceed to the Trial of any of the im- " peached Lords whom the Commons ſhall be firſt ready to begin with, " they have given a full Proof of their Willingneſs to comply with the " Commons in any thing which may appear reaſonable, in order to the " ſpeedy determining of the Impeachments now depending: And there- " fore (as the Lords conceive) the Commons had no Occaſion to begin " any Diſpute on that Head; ſo their Lordſhips are careful to decline " entering into a Controverſy, which ſeems to them to be of no Uſe at " preſent.

" The Lords think themſelves obliged to aſſert their undoubted Right " to appoint a Day for the Trial of any Impeachment depending before " them, if they ſee good Cauſe for it, without any previous Signification " from the Commons of their being ready to proceed; which Right is " warranted by many Precedents, as well as conſonant to Juſtice and " Reaſon; and their Lordſhips, according to the Example of their An- " ceſtors, ſhall always uſe that Right, with a Regard to the equal and " impartial Adminiſtration of Juſtice, and with a due Care to prevent " unreaſonable Delays.

" This being the Caſe, the Lords cannot but wonder that the Com- " mons, without any Foundation for it, ſhould make uſe of Expreſſions " which, as their Lordſhips conceive, have never been uſed before by one " Houſe of Parliament to another; and which, if the like were returned, " muſt neceſſarily deſtroy all good Correſpondence between the two " Houſes.

" The laſt Part of the Commons Meſſage being in effect a Repetition " only of their former of the thirty-firſt of *May*, to which the Lords " have already returned a full Anſwer, their Lordſhips think it not re- " quiſite to ſay more, than that they cannot apprehend with what Colour " their calling upon the Houſe of Commons to ſend up Articles againſt " two Lords, whom the Commons have ſo long ſince impeached in ge- " neral Terms, can be ſaid to tend to the Delay of Juſtice. And there- " fore as the Lords think the Commons ought to have forborn that Re- " flexion; ſo their Lordſhips, in ſaying no more upon the Occaſion of " this Meſſage of the Commons, think they have given a convincing " Proof of their Moderation, and of their ſincere Deſire of preſerving " a good Correſpondence between the Two Houſes, which is ſo neceſ- " ſary for the publick Security, as well as doing Right upon the Impeach- " ments."

Ordered, That the ſaid Meſſage, relating to the Impeachments, be referred to the Committee who were appointed to draw up Articles of Impeachment, and to ſearch Precedents, and to draw up an Anſwer thereunto.

A Meſſage from the Lords by Sir *Richard Holford* and Mr. *Gery*.

Mr. Speaker, We are commanded by the Lords to acquaint this Houſe, That the Lords have appointed the Trial of *John* Lord *Somers* on *Friday* next, on the Impeachment againſt him by this Houſe.

Ordered, That the ſaid Meſſage be taken into Conſideration To-morrow Morning.

* Though this Meſſage is printed in Vol. V. Pag. 361. yet, to preſerve the Connexion, and as it is printed in the *Commons Proceedings*, is here inſerted; as are ſome other Meſſages.

Martis, 10 *die Junii*, 1701.

Mr. *Harcourt* reported from the Committee, to whom it was referred to draw up Articles of Impeachment, That they had (according to Order) drawn up an Anſwer to the Meſſage from the Lords Yeſterday, which they had directed him to report to the Houſe; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the ſame was read, and (with an Amendment) agreed unto by the Houſe, and is as followeth, *viz.*

" The Commons, in hopes of avoiding all Interruptions and Delays " in proceeding againſt the impeached Lords, and the many Inconveni- " encies which might ariſe thereby, having propoſed to your Lordſhips " at a Conference, That a Committee of both Houſes might be nomi- " nated to conſider of the moſt proper Ways and Methods of proceeding " on Impeachments; think they might juſtly have expected your Lord- " ſhips Compliance with their ſaid Propoſition, inſtead of your Lordſhips " Anſwer to their Meſſage of the fourth inſtant, which they Yeſterday re- " ceived. In which Anſwer of your Lordſhips, though many Matters " of great Exception are contained, a ſuitable Reply whereunto would " inevitably deſtroy all good Correſpondence between the Two Houſes; " yet the Commons, from an earneſt Deſire to preſerve the ſame, as well " as to give the moſt convincing Proof of their Moderation, and to ſhew " their Readineſs to bring the impeached Lords to ſpeedy Juſtice, at pre- " ſent inſiſt only on their Propoſition for a Committee of both Houſes to " ſettle and adjuſt the neceſſary Preliminaries to the Trials; particularly, " Whether the impeached Lords ſhall appear on their Trials at your " Lordſhips Bar as Criminals? Whether, being under Accuſations of the " ſame Crimes, they are to ſit as Judges on each other's Trials for thoſe " Crimes, or can vote in their own Caſes, as we find by your Lordſhips " Journals, ſince their being impeached, they have been admitted to do? " Which Matters, and ſome others, being neceſſary to be adjuſted, the " Commons cannot but inſiſt on a Committee of both Houſes to be ap- " pointed for that Purpoſe. Their departing from which would be giving " up the Rights of the Commons of *England*, known by unqueſtionable " Precedents and the Uſage of Parliament, and making all Impeachments " (the greateſt Bulwark of the Laws and Liberties of *England*) impracti- " cable for the future."

Ordered, That Mr. *Harcourt* do carry the Anſwer to the Lords.

The Houſe (according to Order) proceeded to take into Conſideration the Meſſage from the Lords Yeſterday, whereby they acquainted this Houſe, That they have appointed the Trial of *John* Lord *Somers* on *Friday* next, on the Impeachment againſt him; and the ſame was read.

Ordered, That the ſaid Meſſage be referred to the Committee appointed to draw up Articles of Impeachment, to prepare an Anſwer to the ſaid Meſſage.

A Meſſage from the Lords, by Sir *Richard Holford* and Mr. *Gery*.

Mr. Speaker, The Lords do deſire a preſent Conference with this Houſe in the *Painted Chamber*, upon the Subject-Matter of the laſt Conference.

To which the Houſe agreed; and the Meſſengers were called in again, and *Mr. Speaker* acquainted them therewith.

Ordered, That the Committee that managed the laſt Conference, do manage this Conference.

And the Managers went to the Conference, and being returned,

Mr. *Harcourt* reported, That he had (according to Order) carried the ſaid Anſwer to the Lords.

Mr. *Harcourt* alſo reported, The Managers appointed had met the Lords at the Conference; and that the Conference, on the Part of the Lords, was managed by the Duke of *Devonſhire*, who acquainted them,

" That the Lords have deſired this Conference upon Occaſion of the " laſt Conference, in order to preſerve a good Correſpondence with the " Houſe of Commons, which they ſhall always endeavour.

" As to the late Meſſages between the Two Houſes, their Lordſhips are " well aſſured, that on their Part nothing has paſſed but what was agree- " able to the Methods of Parliament, and proper to preſerve that good " Underſtanding between both Houſes which is neceſſary for the carrying " on of the publick Buſineſs.

" As to the Propoſal of the Commons, That a Committee of both " Houſes ſhould be appointed, to conſider of the Ways and Methods of " Proceedings on Impeachments, their Lordſhips cannot agree to it;

1. " Becauſe they do not find that ſuch a Committee was appointed on " Occaſion of Impeachments for Miſdemeanours; and their Lordſhips " think themſelves obliged to be extremely cautious in admitting any " Thing new in Matters relating to Judicature.

2. " That although a Committee of this Nature was agreed to upon " the Impeachments of the Earl of *Danby* and the five Popiſh Lords for " High-Treaſon; yet it was upon Occaſion of ſeveral conſiderable Queſtions " and Difficulties which did then ariſe. And their Lordſhips do not find " that the Succeſs in that Inſtance was ſuch, as ſhould encourage the pur- " ſuing the ſame Methods again, though in the like Caſe: The Lords " obſerving, that after much Time ſpent at that Committee, the Diſ- " putes were ſo far from being there adjuſted, that they occaſioned an ab- " rupt Concluſion of a Seſſion of Parliament.

3. " Their Lordſhips are of Opinion, That the Methods of Proceed- " ings on Impeachments for Miſdemeanours are ſo well ſettled by the " Uſage of Parliament, that they do not foreſee any Difficulties likely to " happen; at leaſt none have been yet ſtated to them: And all the Pre- " liminaries in the Caſe of *Stephen Goudett*, and others (which was the " laſt Inſtance of Impeachments for Miſdemeanours) were eaſily ſettled " and agreed to without any ſuch Committee.

4. " The Lords cannot but obſerve, That this Propoſal of the Com- " mons comes ſo very late, that their Lordſhips can expect no other " Fruit of ſuch a Committee, but the preventing of the Trials during " this Seſſion,

" The Lords aſſure the Commons, That in caſe any Difficulties ſhall " ariſe in the Progreſs of theſe Trials (which their Lordſhips do not fore- " ſee), they will be ready to comply with the Commons in removing them, " as far as Juſtice and the Uſage of Parliament will admit."

Ordered, That the ſaid Report be taken into Conſideration To-morrow Morning.

Mercurii, 11 *die Junii*, 1701.

The Houſe (according to Order) took into Conſideration the Report of the Conference with the Lords Yeſterday.

Ordered, That a free Conference be deſired with the Lords upon the Subject-Matter of the laſt Conference.

Mr. *Harcourt* reported from the Committee appointed to draw up Articles of Impeachment, That they had, according to Order, drawn up an Anſwer to the Meſſage from the Lords on *Monday* laſt, for appointing the Trial of the Lord *Somers* upon *Friday* next, which they had directed him to report to the Houſe; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the ſame was read, and agreed unto by the Houſe, and is as followeth, *viz.*

" The Commons, on *Monday* laſt, received a Meſſage from your Lord- " ſhips, That your Lordſhips had appointed the Trial of *John*, Lord " *Somers*, upon *Friday* next, on their Impeachment againſt him; in " which they obſerve your Lordſhips have not nominated any Place for " his Trial, though your Lordſhips thought fit to make that Matter on " the laſt Impeachment for Miſdemeanour the Subject of a long Debate.

" And they cannot but take Notice, That your Lordſhips have taken " as long a Time to give your Anſwer to the Commons Deſire of a " Committee of both Houſes, delivered at a Conference on *Friday* laſt, as " you are pleaſed to allow the Commons to have of the Day appointed by " your Lordſhips for the ſaid Trial.

" Your Lordſhips appointing ſo ſhort a Day, eſpecially whilſt the Pro- " poſition made to your Lordſhips for a Committee of both Houſes was " undetermined, the Commons take to be ſuch a Hardſhip to them, and " ſuch an Indulgence to the Perſons accuſed, as is not to be paralleled in " any Parliamentary Proceeding.

" The Commons muſt likewiſe acquaint your Lordſhips, That their " Experience of the Interruption of a former Trial on an Impeachment " for Miſdemeanours, for Want of ſettling the Preliminaries between the " Two Houſes, obliges them to inſiſt on a Committee of both Houſes " for preventing the like Interruption.

" And they conceive 'twould be very prepoſterous for them to enter " upon the Trial of any of thoſe Lords, till your Lordſhips diſcover " ſome Inclination to make the Proceeding thereupon practicable; and " therefore they think they have Reaſon to inſiſt upon another Day to " be appointed for the Trial of the Lord *Somers*. And the Commons " doubt not but to ſatisfy your Lordſhips, at a free Conference of the " Neceſſity of having a Committee of both Houſes, before they can pro- " ceed upon the ſaid Trial."

Ordered, That Mr. *Harcourt* do carry the ſaid Anſwer to the Lords.

Ordered, That Col. *Granville* do go to the Lords, and deſire the free Conference.

Mr. *Harcourt* reported, That he had (according to Order) delivered the Anſwer to the Lords Meſſage.

Jovis, 12 *die Junii*, 1701.

Colonel *Granville* reported, That he having (according to Order) been at the Lords to deſire a free Conference with their Lordſhips upon the Subject-Matter of the laſt Conference, the Lords anſwered, That they will ſend an Anſwer by Meſſengers of their own.

The engroſſed Articles of Impeachment againſt *Charles* Lord *Halifax* were read.

Ordered, That the Articles be carried to the Lords.

Ordered, That Mr. *Bruges* do carry the ſaid Articles to the Lords.

Ordered, That he do alſo pray and demand, That *Charles* Lord *Halifax* do give ſufficient Security to abide the Judgment of the Houſe of Lords.

A Meſſage from the Lords by Dr. *Newton* and Mr. *Gery*.

Mr. Speaker, We are commanded by the Lords to acquaint this Houſe, That,

" In Anſwer to the Meſſage from the Houſe of Commons of the tenth " Inſtant, the Lords ſay, That although they take it to be unparliamen- " tary in many Particulars, yet to ſhew their real Deſire of avoiding Diſ- " putes, and removing all Pretence of delaying the Trials of the im- " peached Lords, they will only take Notice of that Part of their Meſ- " ſage, wherein the Commons propoſe ſome Things as Difficulties in re- " ſpect of the Trials, which Matters relating wholly to their Judicature, " and to their Rights and Privileges as Peers, they think fit to acquaint " the Commons with the following Reſolutions of the Houſe of Lords."

I. *That no Lord of Parliament, impeached of High Crimes and Miſdemeanours, and coming to his Trial, ſhall, upon his Trial, be without the Bar.*

II. *That no Lord of Parliament, impeached of High Crimes and Miſdemeanours, can be precluded from voting on any Occaſion, except in his own Trial.*

" Their Lordſhips further take Notice of a Miſtake in Point of Fact " alledged in the Meſſage of the Commons, it no way appearing upon " their Journals, that the Lords impeached have voted in their own Caſe.

" The Lords, being well aſſured that all the Steps that have been taken " by them in relation to theſe Impeachments, are warranted by the " Practice of their Anceſtors, and the Uſage of Parliament, have Reaſon " to expect the Trials ſhall proceed without Delay."

Alſo, That they are commanded by the Lords to acquaint this Houſe, That,

" In Anſwer to the Meſſage of the Houſe Commons Yeſterday, the " Lords ſay, That they cannot give a greater Evidence of their ſincere " and hearty Deſires of avoiding all Differences with the Houſe of Com- " mons, and of proceeding on the Trials of the Impeachments, than

" by not taking Notice of the ſeveral juſt Exceptions to which that " Meſſage is liable, both as to the Matter and Expreſſions.

" The Lords have nothing farther from their Thoughts, than the go- " ing about to do any thing which might have the leaſt Appearance of " Hardſhip with Relation to the Commons.

" But the Anſwer of the Lord *Somers* to the Articles exhibited againſt " him, having been ſent down to the Commons on the twenty-fourth of " *May* laſt, and they having by their Meſſage of the thirty-firſt of *May*, " ſignified to their Lordſhips their Intention of beginning with the Trial " of his Impeachment in the firſt Place:

" The Lords, conſidering how far the Seſſion is advanced, thought it " reaſonable to appoint the thirteenth Inſtant for the ſaid Trial, their " Lordſhips finding ſeveral Precedents of appointing Trials in Impeach- " ment within a ſhorter Time.

" The Lords alſo think it incumbent upon them to endeavour to diſ- " patch the Trials of all the impeached Lords before the Riſing of the " Parliament. This is what Juſtice requires, and cannot be looked " upon as a Matter of Indulgency: Nevertheleſs, that the Commons " may ſee how deſirous their Lordſhips are to comply with them in any " Thing which may be conſiſtent with Juſtice, they have appointed the " Trial of Impeachment againſt *John* Lord *Somers* on *Tueſday* the ſeven- " teenth of this Inſtant *June*, at ten o'Clock in the Forenoon, in the " Houſe of Lords, which will be then ſitting in *Weſtminſter-Hall*."

Alſo, That they were commanded by the Lords to acquaint this Houſe, That the Lords do agree to a free Conference with the Commons, as deſired; and do appoint To-morrow at one o'Clock in the *Painted-Chamber*.

Ordered, That the ſaid two firſt Meſſages be referred to the Committee who were appointed to draw up the Articles of Impeachment.

Veneris, 13 *die Junii*, 1701.

Mr. *St. John* reported from the Committee to whom it was referred to draw up the Articles of Impeachment, and to whom the Meſſages from the Lords Yeſterday were referred, That they had drawn up an Anſwer to the ſaid Meſſages, which they had directed him to report to the Houſe; which he read in his Place, and afterwards delivered in at the Clerk's Table; where the ſame was read and agreed unto by the Houſe, and is as followeth, *viz.*

" The Houſe of Commons find greater Reaſon to inſiſt upon their Pro- " poſal of a Committee of both Houſes from the two Meſſages received " Yeſterday from your Lordſhips; for their Ambiguity and Uncertainty " do ſhew the Methods of former Parliaments to be the moſt proper Way " for Diſpatch of Buſineſs.

" The Commons have been obliged to employ that Time in conſidering " and anſwering your Lordſhips Meſſages, which otherwiſe would have " been ſpent in preparing for the Lord *Somers*'s Trial; ſo that the Delay " muſt be charged where the Occaſion ariſeth. And the Commons have " deſired a Committee of both Houſes, to adjuſt the Preliminaries of the " Trials, cannot but think it ſtrange your Lordſhips ſhould come to Re- " ſolutions upon two of thoſe Points, while the Propoſal of the Houſe " of Commons is under Debate at Conferences between the two Houſes, " the Commons having other Difficulties to propoſe, which concern " them as Proſecutors, and all future Impeachments.

" And though the Commons leave the Subject of your Lordſhips Re- " ſolutions, with other Things, to be debated at a Committee of both " Houſes; yet they cannot but obſerve that your Lordſhips ſecond Re- " ſolution is no direct Anſwer to the Commons Propoſal; which was, " Whether Peers impeached of the ſame Crimes ſhall vote for each other " upon their Trial for the ſame Crimes? And the Commons cannot be- " lieve that any ſuch Rule can be laid down in plain Words, where there " is a due Regard to Juſtice.

" And as to what your Lordſhips obſerve, That there is a Miſtake in " Point of Fact alledged by the Commons; this Houſe may take Notice " of the Cautions uſed by your Lordſhips, in wording that Part of your " Meſſage; for they know your Lordſhips are too well acquainted with " the Truth of the Fact, to affirm that the impeached Lords did not vote " in their own Caſes: And though the appearing or not appearing upon " your Lordſhips Journal, does not make it more or leſs agreeable to the " Rules of Juſtice, yet the Commons cannot but add this further Obſer- " vation from your Lordſhips Journal, That the impeached Lords Pre- " ſence is not only recorded when thoſe Votes paſſed, but they alſo find " ſome of them appointed of Committees for preparing and drawing up " the Meſſages and Anſwers to the Houſe of Commons; which they do " not think has been the beſt Expedient for preſerving a good Correſpon- " dence between the two Houſes, or adjuſting what will be neceſſary " upon theſe Trials: And therefore the Commons cannot think it agree- " able to the Rules of Parliament for them to appear at a Trial, till all " neceſſary Preliminaries are firſt ſettled with your Lordſhips."

Ordered, That the ſaid Anſwer be ſent to the Lords.

Ordered, That Mr. *St. John* do carry the ſaid Anſwer.

Ordered, That the Committee who managed the laſt Conference do manage the free Conference.

And the Managers went to the Conference; and being returned,

Mr. *Harcourt* reported what had happened at the Conference in a Speech of the Lord *Haverſham*, upon which the Managers thought fit to withdraw from the Conference, to the End they might acquaint the Houſe therewith.

Ordered, That the Managers do withdraw into the Speaker's Chamber, and collect the Matter of the Conference, and what was ſaid by the Lord *Haverſham*, and report the ſame to the Houſe. And the Committee withdrew; and the Houſe adjourned till the Return of the Committee.

The Committee being returned,

Mr. *Harcourt* reported the Matter of the free Conference, and the Words which the Lord *Haverſham* had ſpoke thereat, which he read in his Place, and afterwards delivered in at the Clerk's Table; where the ſame was read, and is followeth, *viz.*

" That the Managers appointed by this Houſe met the Lords at a free " Conference, the Subject-Matter whereof was opened by Mr. *Harcourt*, " and immediately afterwards further argued by Sir *Bartholomew Shower*.

" It was inſiſted on by each of them, That the Reaſons offered by their " Lordſhips at the laſt Conference, were not ſufficient for their Lordſhips " diſagreeing to a Committee of both Houſes, deſired by the Commons " at the firſt Conference.

" That notwithſtanding thoſe Reaſons, the Commons ſtill thought a " Committee of both Houſes abſolutely neceſſary for adjuſting and pre- " venting ſuch Differences as had happened, or might ariſe previous to, " or upon the Trials; and therefore inſiſted that ſuch a Committee ſhould " be appointed before the Commons could proceed on any Trial.

" 'Twas urged as one Reaſon for ſuch a Committee, That many Diſ- " ficulties might happen, whereby the Trials might be obſtructed, if the " Preliminaries ſhould not be firſt adjuſted; as one Inſtance, that Point " of ſeveral Lords being under Impeachments of the ſame Crimes, vot- " ing on each others Trials, was mentioned.

" The Lord Steward firſt replied, and nothing was offered by his Grace " but what was material and pertinent to the Matter in Queſtion, and " agreeable to the Method of Parliament in free Conferences.

" That *John* Lord *Haverſham* ſpoke immediately after, and in his Lord- " ſhip's Diſcourſe uſed theſe, or the like Expreſſions."

ONE Thing there is, though I cannot ſpeak to it, becauſe I am bound up by the Orders of the Houſe; yet it muſt have ſome Anſwer: That is, as to the Lords voting in their own Caſe; it requires an Anſwer, though I cannot go into the Debate of it. The Commons themſelves have made this Precedent, for in theſe Impeachments they have allowed Men guilty of the ſame Crimes to vote in their own Houſe, and therefore we have not made any Diſtinction in our Houſe, that ſome ſhould vote, and ſome not. The Lords have ſo high an Opinion of the Juſtice of the Houſe of Commons, that they hope Juſtice ſhall never be made uſe of as a Maſk for any Deſign; and therefore give me Leave to ſay (though I am not to argue it) 'tis a plain Demonſtration, that the Commons think theſe Lords innocent; and I think the Propoſition is undeniable, for there are ſeveral Lords in the ſame Crimes, in the ſame Facts, there is no Diſtinction: And the Commons leave ſome of theſe Men at the Head of Affairs, near the King's Perſon, to do any Miſchief if their Perſons were inclined to it, and impeach others, when they are both alike guilty, and concerned in the ſame Facts. This is a Thing I was in hopes I ſhould never have heard aſſerted, when the Beginning of it was from the Houſe of Commons.

" Theſe Expreſſions were inſtantly objected to by Sir *Chriſtopher Muſ-* " *grave*; and the Managers took them to be ſo great an Aſperſion on the " Honour of this Houſe, that they thought themſelves obliged in Duty " immediately to withdraw from the free Conference."

As the Managers were withdrawing, his Grace my Lord Steward ſpoke to the Effect following; " That he hoped we would not think that " Lord had any Authority from the Houſe of Lords, to uſe any ſuch Ex- " preſſions towards the Commons."

Reſolved, That *John* Lord *Haverſham* hath, at the free Conference this Day, uttered moſt ſcandalous Reproaches and falſe Expreſſions, highly reflecting upon the Honour and Juſtice of the Houſe of Commons, and tending to the making a Breach in the good Correſpondence between the Lords and Commons, and to the interrupting the publick Juſtice of the Nation, by delaying the Proceedings on the Impeachments.

Reſolved, That *John* Lord *Haverſham* be charged before the Lords for the Words ſpoken by the ſaid Lord this Day at the free Conference: And that the Lords be deſired to proceed in Juſtice againſt the ſaid Lord *Haverſham*, and to inflict ſuch Puniſhment upon the ſaid Lord, as ſo high an Offence againſt the Houſe of Commons does deſerve.

Ordered, That Sir *Chriſtopher Muſgrave* do carry the ſaid Charge and Reſolution to the Lords.

A Meſſage from the Lords by Dr. *Newton* and Mr. *Gery*.

Mr. Speaker, The Lords having been informed by their Managers, that ſome Interruption happened at the free Conference, which their Lordſhips are concerned at, becauſe they wiſh that nothing ſhould interrupt the public Buſineſs, do deſire the Commons would come again preſently to the ſaid free Comference, which they do not doubt will prove the beſt Expedient to prevent the Inconvenience of a Miſunderſtanding upon what has paſt.

Reſolved, That this Houſe will ſend an Anſwer by Meſſengers of their own.

And the Meſſengers were called in again, and *Mr. Speaker* acquainted them therewith.

Sir *Chriſtopher Muſgrave* reported, That he had been at the Lords, and (according to Order) delivered the Charge and Reſolution of the Houſe, relating to the Lord *Haverſham*.

Sabbati, 14 *die Junii*, 1701.

A Meſſage from the Lords by Sir *John Hoſkins* and Dr. *Newton*.

Mr. Speaker, The Lords have commanded us to acquaint this Houſe, That upon the Occaſion of their laſt Meſſage Yeſterday, in order to continue a good Correſpondence between the two Houſes, their Lordſhips did immediately appoint a Committee to ſtate the Matter of the free Conference, and alſo to inſpect Precedents of what has happened of the like Nature; and that the publick Buſineſs may receive no Interruption, the Time deſired by their Lordſhips for renewing the free Conference being elapſed, their Lordſhips deſire a preſent free Conference in the Painted-Chamber, upon the Subject-Matter of the laſt free Conference.

Reſolved, That this Houſe will ſend an Anſwer by Meſſengers of their own.

And the Meſſengers were called in again, and *Mr. Speaker* aquainted them therewith.

Reſolved,

Reſolved, That an Anſwer be return'd to the Lords, That the Commons are extremely deſirous to preſerve a good Correſpondence between the Two Houſes, and to expedite the Trials of the impeach'd Lords; but do conceive 'tis not conſiſtent with the Honour of the Commons to renew the free Conference, until they have received Reparation by their Lordſhips doing Juſtice upon *John* Lord *Haverſham*, for the Indignity he Yeſterday offer'd to the Houſe of Commons.

Ordered, That the Lord *Cheine* do carry the ſaid Anſwer to the Lords.

Mr. *Bruges* reported, That he had carried the Articles of Impeachment againſt *Charles* Lord *Halifax* to the Lords, and had demanded, That the ſaid Lord *Halifax* do give Security to abide the Judgment of the Houſe of Lords.

The Lord *Cheine* reported, That he had (according to Order) been at the Lords, and delivered the Anſwer to their Lordſhips Meſſage.

Lunæ, 16 *die Junii*, 1701.

A Meſſage from the Lords by Sir *Richard Holford* and Dr. *Newton*.

Mr. Speaker, We are commanded by the Lords to acquaint this Houſe, That the Lord *Somers* having inform'd the Lords, that Sir *Stephen Fox*, *John Smith*, Eſq. *William Lownds*, Eſq. *Stephen Harvey*, Eſq. and *William Gulſton*, Eſq. Members of this Houſe, may be material Witneſſes for him, at his Trial on *Tueſday* next in *Weſtminſter-Hall*, the Lords deſire that they may have Leave to attend and give their Teſtimonies at the ſaid Trial. And that a Letter which his Majeſty was pleaſed to write to him in 1698. being now in this Houſe, will be neceſſary for his Defence at his Trial, they deſire that the ſaid Letter may be produced at the ſaid Trial.

Reſolved, That this Houſe will ſend an Anſwer to the ſaid Meſſage by Meſſengers of their own.

And the Meſſengers were call'd in again, and *Mr. Speaker* acquainted them therewith.

Ordered, That the Committee who were appointed to draw up the Articles of Impeachment, do conſider of the Reaſons why this Houſe cannot proceed to the Trial of the Lord *Somers* To-morrow Morning, and report the ſame to the Houſe.

Ordered, That the ſaid Meſſage be referred to the ſaid Committee.

A Meſſage from the Lords by Sir *John Francklyn* and Sir *Richard Holford*.

Mr. Speaker, We are commanded by the Lords to acquaint this Houſe, That the Lords taking into their Care the ordering of the Trial of *John* Lord *Somers* on *Tueſday* the 17th of *June* Inſtant at Ten of the Clock in *Weſtminſter-Hall*, have prepared ſome Notes and Rules to be obſerved at the ſaid Trial, which the Lords have thought fit to communicate to this Houſe.

Die Lunæ, 16 *Junii*, 1701.

That the whole Impeachment is to be read, and then the Anſwer; which being done, the Lord-Keeper is to tell the Commons, That now they may go on with their Evidence.

Then the Lord Keeper is to declare, That now the Court is proceeding to hear the Evidence, and deſire the Peers to give Attention.

If any of the Peers, or the Members of the Houſe of Commons that manage the Evidence, or the Lord impeach'd, do deſire to have any Queſtion aſk'd, they muſt deſire the Lord-Keeper to aſk the ſame.

If any Doubt doth ariſe at the Trial, no Debate is to be in the Court, but the Queſtion ſuſpended to be debated in this Houſe.

The Members of the Houſe of Commons to be there before the Peers come.

None to be covered at the Trial, but the Peers.

That ſuch Peers at the Trial of the impeach'd Lord, who at the Inſtance of the ſaid Lord, or of the Commons, ſhall be admitted Witneſſes, are to be ſworn at the Clerk's Table, and the Lord-Keeper to adminiſter the Oath, and to deliver their Evidence in their own Places.

Thoſe Witneſſes that are Commoners are to be ſworn at the Bar by the Clerk, and are to deliver their Evidence there.

The Oath to be,

The Evidence which you ſhall give upon the Impeachment of ——— *ſhall be the Truth, the whole Truth, and nothing but the Truth; ſo help you God, and the Contents of this Book.*

The impeach'd Lord may croſs-examine Witneſſes *viva voce*.

Ordered, That the ſaid Meſſage, or Notes and Rules, be referred to the Committee appointed to draw up the Articles of Impeachment.

A Meſſage from the Lords by Sir *John Francklyn* and Sir *Richard Holford*.

Mr. Speaker, The Lords have commanded us to acquaint this Houſe, That the Lord *Halifax* hath put in his Anſwer to the Articles exhibited againſt him by this Houſe, and to deliver a Copy thereof to this Houſe.

Alſo the Lords have commanded us to acquaint this Houſe, That this Houſe having, the firſt Day of *April*, ſent up to their Lordſhips an Impeachment againſt *William* Earl of *Portland*, for High Crimes and Miſdemeanours, and there being as yet no particular Articles exhibited againſt him, their Lordſhips think themſelves obliged to put this Houſe in mind thereof.

A Meſſage from the Lords by Sir *John Francklyn* and Sir *Richard Holford*.

Mr. Speaker, We are commanded by the Lords to acquaint this Houſe, That for the keeping a good Correſpondence between the Two Houſes, and to put the Charge againſt *John* Lord *Haverſham* in a Courſe of Juſtice, at his Lordſhip's Motion, have ordered his Lordſhip a Copy of the Charge againſt him, and that he do put in his Anſwer thereunto, in order to bring that Matter to a ſpeedy Judgment.

Martis, 17 *die Junii*, 1701.

Ordered, That no Member of this Houſe do preſume to go into the Place appointed by the Lords for the Trial of the Lord *Somers*, without Leave of this Houſe.

Ordered, That the Serjeant at Arms attending this Houſe, do go with the Mace, and ſummon all the Members of this Houſe that are in, or about *Weſtminſter-Hall*, immediately to attend the Service of the Houſe.

And he went accordingly; and being return'd,

Mr. *Harcourt* reported from the Committee appointed to draw up Articles of Impeachment, and to whom the Meſſages from the Lords Yeſterday were referr'd, to draw up Reaſons why they cannot proceed to the Trial of the Lord *Somers* this Day, That they had drawn up Reaſons, which they had directed him to report to the Houſe accordingly, which he read in his Place, and afterwards deliver'd in at the Clerk's Table, where the ſame were read and agreed unto by the Houſe, and are as follow.

"THE Commons, in this whole Proceeding againſt the impeach'd "Lords, have acted with all imaginable Zeal to bring them to a "ſpeedy Trial; and they doubt not but 'twill appear, by comparing "their Proceedings with all others upon the like Occaſion, that the "Houſe of Commons have nothing to blame themſelves for, but that "they have not expreſſed the Reſentment their Anceſtors have juſtly "ſhewed upon much leſs Attempts, which have been made upon the "Power of Impeachments.

"The Commons, on the thirty-firſt of *May*, acquainted your Lord-"ſhips, that they thought it proper, from the Nature of the Evidence, "to proceed in the firſt Place upon the Trial of the Lord *Somers*, upon "the firſt Intimation from your Lordſhips ſome Days afterwards, That "you would proceed to the Trial of any of the impeach'd Lords, whom "the Commons ſhould be firſt ready to begin with; notwithſtanding your "Lordſhips had before thought fit to appoint which Impeachment ſhould "be firſt tried, and affix a Day for ſuch Trial, without conſulting the "Commons, who are the Proſecutors.

"The Commons determining to expedite the Trials to the utmoſt of "their Power, in hopes of attaining that End, and for the more ſpeedy "and eaſy adjuſting and preventing any Differences which had happen'd, "or might ariſe, previous to or upon theſe Trials, propoſed to your "Lordſhips at a Conference, the moſt parliamentary and effectual Me-"thod for that Purpoſe, and that which in no manner intrench'd upon "your Lordſhips Judicature, That a Committee of both Houſes ſhould "be nominated to conſider of the moſt proper Ways and Methods of "Proceedings upon Impeachments, according to the Uſage of Parliament.

"In the next Meſſage to the Commons, upon *Monday* the ninth of "*June*, your Lordſhips thought fit, without taking the leaſt Notice of "this Propoſition, to appoint the *Friday* then following, for the Trial of "the ſaid Lord *Somers*; whereunto, as well as to many other Meſſages "and Proceedings of your Lordſhips upon this Occaſion, the Houſe of "Commons might have juſtly taken very great Exceptions; yet, as an "Evidence of their Moderation, and to ſhew their Readineſs to bring "the impeach'd Lords to ſpeedy Juſtice, the Commons inſiſted only on "their Propoſition, for a Committee of both Houſes to ſettle and adjuſt "the neceſſary Preliminaries to the Trial: Particularly, Whether the "impeach'd Lords ſhould appear on their Trial at your Lordſhips Bar as "Criminals? Whether being under Accuſations of the ſame Crimes, "they ſhould ſit as Judges on each others Trial for thoſe Crimes, or "ſhould vote in their own Caſes, as 'tis notorious they have been per-"mitted by your Lordſhips to do, in many Inſtances which might be "given? To which Particulars your Lordſhips have not yet given a di-"rect Anſwer, though put in Mind thereof by the Commons.

"Your Lordſhips, at a Conference, having offered ſome Reaſons why "you could not agree to a Committee of both Houſes, to adjuſt the "neceſſary Preliminaries, the Commons thereupon deſired a free Con-"ference, and your Lordſhips agreed thereunto; at which 'tis well known "to many of your Lordſhips who were then preſent, what moſt ſcanda-"lous Reproaches, and falſe Expreſſions, highly reflecting upon the Ho-"nour and Juſtice of the Houſe of Commons, were utter'd by *John* Lord "*Haverſham*, whereby the Commons were under a Neceſſity of withdraw-"ing from the ſaid free Conference; for which Offence the Commons "have, with all due Regard to your Lordſhips, prayed your Lordſhips "Juſtice againſt the Lord *Haverſham*, but have as yet received no man-"ner of Satisfaction.

"The Commons reſtrain themſelves from enumerating your Lordſhips "very many irregular and unparliamentary Proceedings upon this Occa-"ſion; but think it is what they owe to publick Juſtice, and all the Com-"mons of *England*, whom they repreſent, to declare ſome few of thoſe "Reaſons, why they peremptorily refuſe to proceed to the Trial of the "Lord *Somers* on the ſeventeenth of *June*.

"*Firſt*, Becauſe your Lordſhips have not yet agreed, That a Commit-"tee of both Houſes ſhould be appointed for ſettling the neceſſary Preli-"minaries; a Method never until this Time denied by the Houſe of "Lords, whenſoever the Commons have thought it neceſſary to deſire the "ſame.

"*Secondly*, Should the Commons (which they never will do) be con-"tented to give up thoſe Rights which have been tranſmitted to them from "their Anceſtors, and are of abſolute Neceſſity to their Proceedings on "Impeachments; yet whilſt they have any Regard to publick Juſtice, "they never can appear as Proſecutors before your Lordſhips, 'till your "Lordſhips have firſt given them Satisfaction, That Lords impeach'd of "the ſame Crimes ſhall not ſit as Judges on each others Trials for thoſe "Crimes.

"*Thirdly*, Becauſe the Commons have, as yet, received no Reparation "for the great Indignity offered to them at the free Conference by the "Lord *Haverſham*: The Commons are far from any Inclination, and "cannot be ſuppoſed to be under any Neceſſity of delaying the Trial of "the Lord *Somers*: There is not any Article exhibited by them in main-"tenance of their Impeachment againſt the Lord *Somers*, for the Proof "whereof they have not full and undeniable Evidence; which they will "be ready to produce as ſoon as your Lordſhips ſhall have done Juſtice "upon the Lord *Haverſham*, and the neceſſary Preliminaries, in order to "the ſaid Trial, ſhall be ſettled by a Committee of both Houſes.

"The Commons think it unneceſſary to obſerve to your Lordſhips, "That moſt of the Articles whereof the Lord *Somers* ſtands im-"peach'd, will appear to your Lordſhips to be undoubtedly true from "Matters of Record, as well as by the Confeſſion of the ſaid Lord

"*Somers*,

" *Somers*, in his Anſwer to the ſaid Articles, to which the Commons " doubt not but your Lordſhips will have a due Regard when his Trial " ſhall regularly proceed."

Reſolved, That the ſaid Reaſons be ſent by a Meſſage to the Lords.

Ordered, That the Earl of *Dyſert* do carry the ſaid Meſſage.

The Earl of *Dyſert* reported to the Houſe, That he had (according to their Order) carried up their Meſſage to the Lords.

Ordered, That no Member of this Houſe do preſume to appear at the Place erected for the pretended Trial of the Impeachment of the Lord *Somers*, under the Penalty of incurring the utmoſt Diſpleaſure of this Houſe.

Mercurii, 18 *die Junii*, 1701.

Ordered, That a Committee do inſpect the Lords Journals, with relation to the Proceedings againſt the impeached Lords, and report what they find therein.

Ordered, That the Committee who were appointed to draw up the Articles of Impeachment, be the ſaid Committee.

Ordered, That no Member of this Houſe do preſume to go out of Town.

Ordered, That all Members of this Houſe do attend the Service of the Houſe on *Friday* Morning next.

Veneris, 20 *die Junii*, 1701.

A Meſſage from the Lords by Sir *John Franklyn* and Sir *Lacon William Child*.

Mr. Speaker, We are commanded by the Lords to acquaint this Houſe, That the Lords have appointed *Monday* the twenty-third Day of this inſtant *June*, at Ten of the Clock in the Forenoon, for the Trial of *Edward* Earl of *Orford*, in *Weſtminſter-Hall*.

Alſo, That they are commanded by the Lords to deliver to this Houſe a Copy of the Lord *Haverſham*'s Anſwer to the Charge againſt him.

Alſo, That the Lords, in Anſwer to the Meſſage of the Commons of the ſeventeenth inſtant, ſay, the only true Way of determining which of the two Houſes has acted with the greateſt Sincerity, in order to bring the impeached Lords to their Trials, is to look back upon the reſpective Proceedings.

The Lords do not well underſtand what the Commons mean by that Reſentment which they ſpeak of in their Meſſage. Their Lordſhips own the Houſe of Commons have a Right of Impeaching, and the Lords have the undoubted Power of doing Juſtice upon thoſe Impeachments, by bringing them to Trial, and condemning or acquitting the Parties in a reaſonable Time. This Power is derived to them from their Anceſtors, which they will not ſuffer to be wreſted from them by any Pretences whatſoever.

Their Lordſhips cannot but wonder, that the Commons ſhould not have propoſed a Committee of both Houſes much ſooner, if they thought it ſo neceſſary for the bringing on the Trials; no Mention being made of ſuch a Committee from the firſt of *April* to the ſixth of *June*, although, during that Interval, their Delays were frequently complained of by the Houſe of Lords.

The Manner in which the Commons demanded this Committee, the Lords look upon as a direct invading of their Judicature; and therefore, as there never was a Committee of both Houſes yielded to by the Lords in caſe of any Impeachment for High Crimes and Miſdemeanours; ſo their Lordſhips do inſiſt, that they will make no new Precedent upon this Occaſion. Many Impeachments for Miſdemeanours have in all Times been determined without ſuch a Committee: And if now the Commons think fit, by an unprecedented Demand, to form an Excuſe for not proſecuting their Impeachments, it is demonſtrable where the Obſtruction lies.

As to the Preliminaries which the Commons mention in particular, as proper to be ſettled at ſuch a Committee, they have received the Reſolutions of the Houſe of Lords therein by their Meſſage of the twelfth inſtant, from which, being Matters relating entirely to their Judicature, their Lordſhips cannot depart.

As to the laſt Pretence, the Commons would make to ſhelter the delaying the Trials, from ſome Expreſſions which fell from the Lord *Haverſham* at the free Conference, at which Offence was taken, their Lordſhips will only obſerve,

Firſt, That they have omitted nothing which might give the Commons all reaſonable Satisfaction of their Purpoſe to do them Juſtice in that Matter, ſo far as is conſiſtent with doing Juſtice to that Lord; and alſo to preſerve a good Correſpondence with them, as appears by the ſeveral Steps they have taken.

Secondly, That this Buſineſs has no Relation to the Trial of the impeached Lords; and therefore their Lordſhips cannot imagine why the Commons ſhould make Satisfaction and Reparation againſt the Lord *Haverſham* a neceſſary Condition for the going on with the Trials, and at the ſame time find no Difficulty in proceeding on other Buſineſs.

Reſolved, In Anſwer to the Meſſage of the Lords, appointing *Monday* next for the Trial of the Earl of *Orford*, That the Lords have been acquainted, that the Commons would proceed in the firſt Place againſt the Lord *Somers*; and they are ready to go to that Lord's Trial as ſoon as the Commons have received Satisfaction for the Affront offered to the Houſe of Commons by the Lord *Haverſham* at the Free Conference; and that the neceſſary Preliminaries are adjuſted by a Committee of both Houſes.

Ordered, That the Lord *Mordant* do carry the ſaid Anſwer to the Lords.

The Lord *Mordant* reported to the Houſe, That he had (according to Order) carried their Anſwer to the Lords.

Mr. *Bruges* reported from the Committee appointed to inſpect the Lords Journals, with relation to the Proceedings againſt the impeached Lords, and report the ſame to the Houſe, That they had inſpected the ſame accordingly, and had directed him to report what they find therein; which he read in his Place, and afterwards delivered in at the Clerk's Table, where the ſame was read, and is as followeth, *viz.*

A Copy of the Lords Journal.

The Houſe being moved to go into *Weſtminſter-Hall*, in order to the Trial of the Lord *Somers*;

After Debate,

The Queſtion was put, Whether this Houſe ſhall go this Day into *Weſtminſter-Hall*, in order to proceed upon the Trial of the Lord *Somers*, according to the Order of the Day?

It was reſolved in the Affirmative.

June 16, 1701.

Diſſentient,

The Reaſons, by an Order of the next Day, are here expunged.

Somerſet,	*Scarſdale*,	*Guilford*,
H. London,	*Nottingham*,	*Godolphin*,
Normanby,	*Feverſham*,	*Cholmondley*,
Rocheſter	*Plymouth*,	*Howard*,
Caernarvon,	*Abingdon*,	*Lexington*,
Marlborough,	*Denbigh*,	*Peterborough*,
Oxford,	*Warrington*,	*Thanet*,
La Warr,	*Tho. Roſſen*,	*Derby*,
Dartmouth,	*Hunſdon*,	*Jermyn*,
Weymouth,	*Weſton*,	*Northumberland.*
Jonat. Exon,	*Jeffreys*,	

June 17.

The Lord Biſhop of *Hereford* being ſick, his Abſence was excuſed in the Hall.

A Meſſage was ſent to the Houſe of Commons by Mr. Baron *Tracy* and Mr. Baron *Bury*, to acquaint them, That the Lords intend preſently to proceed to the Trial of *John* Lord *Somers* in *Weſtminſter-Hall*.

Then this Queſtion was propoſed, Whether the Earl of *Orford* and Lord *Halifax* may withdraw at the Trial of the Lord *Somers*?

Then this previous Queſtion was put, Whether this Queſtion ſhall be now put?

It was reſolved in the Affirmative.

Then the main Queſtion was put, Whether the Earl of *Orford* and Lord *Halifax* ſhall have Leave to withdraw at the Trial of the Lord *Somers*?

It was reſolved in the Affirmative.

Then the Lord Keeper deſired that ſome further Directions be given to him in order to the Trial in the Hall, and propoſed, That this Proclamation be made in the Hall, *viz.*

Whereas the Charge of High Crimes and Miſdemeanours has been exhibited by the Houſe of Commons, in the Name of themſelves and all the Commons of England, *againſt* John *Lord* Somers, *all Perſons concerned are to take Notice, That he now ſtands upon his Trial: And they may now come forth in order to make good the ſaid Charge.*

After Debate,

The Queſtion was put, Whether this Proclamation ſhould be made?

It was reſolved in the Affirmative.

Ordered, That the ſaid Proclamation be made in the Hall before the Reading the Articles of Impeachment, and the Lord *Somers*' Anſwer, and alſo after they are read.

Ordered, That the Court in *Weſtminſter-Hall* be cleared for the Lords.

The Earl of *Angleſea* being ſick, his Abſence was excuſed.

Then the Houſe adjourned into *Weſtminſter-Hall*, and the Lords were called by the Herald, and went as ordered, and being ſeated in the Hall,

The Houſe was reſumed.

Then Proclamation was made for Silence, as follows:

Our Sovereign Lord the King, &c.

The Lord Keeper aſked Leave for the Judges to be covered, which was agreed to.

Then the Proclamation, as above ordered, was made.

After which,

The Articles againſt *John* Lord *Somers* were read, and alſo his Lordſhip's Anſwer to them.

After which the ſame Proclamation was again made.

Then the Lord Keeper declared, the Houſe was ready to hear the Evidence againſt *John* Lord *Somers*, and therefore deſired the Lords to give Attention.

The Lord *Somers* moved to have his Counſel heard.

Whereupon,

The Houſe adjourned to the Houſe above.

The Houſe was reſumed.

The Houſe being moved to acquit the Lord *Somers*, and after long Debate, and hearing the Judges to ſeveral Queſtions aſked them by the Lords,

This Queſtion was propoſed,

That *John* Lord *Somers* be acquitted of the Articles of Impeachment againſt him, exhibited by the Houſe of Commons, and all Things therein contained; and that the ſaid Impeachment be diſmiſſed.

Then this Queſtion was put, Whether the Queſtion now ſtated ſhall be put in the Court below?

It was reſolved in the Affirmative.

Diſſentient,

Here the Reaſons are again expunged.

Denbigh,	*Derby*,	*Nottingham*,
Caernarvon,	*Scarſdale*,	*Feverſham*,
Rocheſter,	*Warrington*,	*Thanet*,
Plymouth,	*Weymouth*,	*Peterborough*,
Jerſey,	*Lindſey*,	*Abingdon*,
Guilford,	*Hunſdon*,	*Jeffreys*,
Marlborough,	*H. London*,	*Oxford*,
Tho. Roſſen,	*Howard*,	*Jermyn*,
Lexington,	*La Warr*,	*Godolphin.*
Jonat. Exon,	*Dartmouth*,	
Somerſet,	*Normanby*,	

Then it was agreed and ordered, That in *Weſtminſter-Hall* the Lord Keeper ſhall read the Queſtion, and then call the Junior Baron preſent firſt, and aſk every Lord, Whether Content, or not Content? And that every Lord ſtand up when called, to give his Vote, Content, or not Content; and that the Lord Keeper having taken their Votes, declare the Majority: And if the Majority be for acquitting the Lord *Somers*, the

Lord-Keeper is to declare it ſo; and after particularly to the Lord *Somers*.

Ordered,

That Candles be prepared for the Houſe.

Then the Houſe adjourn'd again to *Weſtminſter-Hall*, and being there, the Houſe was reſumed, and Proclamation made for Silence, the Lord-Keeper put the Queſtion as follows.

> That *John* Lord *Somers* be acquitted of the Articles of Impeachment againſt him exhibited by the Houſe of Commons, and all Things therein contain'd; and that the ſaid Impeachment be diſmiſſed.

Then the Lord-Keeper aſked every Lord, Whether Content, or not Content?

The Lord-Keeper declared, the Majority was for acquitting; and then declared, That *John* Lord *Somers* was acquitted of the Articles of Impeachment againſt him exhibited by the Houſe of Commons, and all Things therein contained; and the ſaid Impeachment was diſmiſſed; and then declared to the Lord *Somers*, that he was acquitted.

Then the Houſe adjourn'd to the Houſe above, and being come thither, the Houſe was reſumed, and the following Orders made.

It is Conſidered, Ordered, and Adjudged, by the Lords Spiritual and Temporal in Parliament Aſſembled, That *John* Lord *Somers* ſhall be, and he is hereby acquitted of the Articles of Impeachment againſt him exhibited by the Houſe of Commons, and all Things therein contained; and that the ſaid Impeachment ſhall be, and is hereby diſmiſſed.

It is Ordered by the Lords Spiritual and Temporal in Parliament Aſſembled, That the Proceedings in this Houſe upon the Impeachments be printed: And that the Lords Committees appointed to conſider of the manner of Proceedings on Impeachments, do meet To-morrow at Ten of the Clock, and inſpect the Journals, and draw up the Matter relating thereunto, in order to be printed, and report to the Houſe.

After which Report read,

Ordered,

That the Serjeant do go with the Mace into *Weſtminſter-Hall*, and Courts there, and Court of Requeſt, and Places adjacent, and ſummon the Members there to attend the Service of the Houſe immediately.

And he went accordingly; and being return'd,

Reſolved,

That the Lords have refuſed Juſtice to the Commons upon the Impeachment againſt the Lord *Somers*, by denying them a Committee of both Houſes, which was deſired by the Commons, as the proper and only Method of ſettling the neceſſary Preliminaries, in order to the proceeding to the Trial of the ſaid Lord *Somers* with Effect: And afterwards, by proceeding to a pretended Trial of the ſaid Lord, which could tend only to protect him from Juſtice, by colour of an illegal Acquittal; againſt which Proceedings of the Lords, the Commons do ſolemnly proteſt, as being repugnant to the Rules of Juſtice, and therefore Null and Void.

Reſolved,

That the Houſe of Lords, by the pretended Trial of *John* Lord *Somers*, have endeavoured to overturn the Right of Impeachments lodged in the Houſe of Commons by the ancient Conſtitution of this Kingdom, for the Safety and Protection of the Commons againſt the Power of Great Men; and have made an Invaſion upon the Liberties of the Subject, by laying a Foundation of Impunity for the greateſt Offenders.

Reſolved,

That all the ill Conſequences which may at this Time attend the Delay of the Supplies given by the Commons for preſerving the Publick Peace, and maintaining the Balance of *Europe*, by ſupporting our Allies againſt the Power of *France*, are to be imputed to thoſe who, to procure an Indemnity for their own enormous Crimes, have uſed their utmoſt Endeavours to make a Breach between the Two Houſes.

Ordered,

That the Meſſage this Day from the Lords be referr'd to the Committee who are appointed to draw up the Articles of Impeachment.

Ordered,

That the ſaid Committee do conſider of the Proceedings between the Two Houſes relating to the impeach'd Lords, and ſtate to this Houſe the Matter of Fact, in order to the Juſtification of this Houſe in their Proceedings.

A Meſſage from the Lords by Doctor *Newton* and Mr. *Gery*.

Mr. Speaker, In Anſwer to the Meſſage of the Houſe of Commons this Day, the Lords do acquaint the Commons, That they might have known by the Records of the Houſe of Lords, that the Lords have proceeded to the Trial of the Lord *Somers* on *Tueſday* laſt, being the Day appointed; and the Commons not appearing to maintain their Articles againſt the ſaid Lord, the Lords have, by Judgment of their Houſe, acquitted him of the Articles of Impeachment againſt him exhibited by the Houſe of Commons, and all Things therein contained; and have diſmiſſed the ſaid Impeachment.

And the Lords have appointed *Monday* next for the Trial of the Earl of *Orford*; on which Day they will proceed on the ſaid Trial.

The Commons ſtill preſſing for a Committee of both Houſes (which the Lords never can conſent to) for the Reaſons already given, their Lordſhips can infer nothing from their perſiſting in that Demand, than that they never deſigned to bring any of their Impeachments to Trial.

As to the Lord *Haverſham*, his Anſwer is now before the Houſe of Commons; and the Lords reſolve to do Juſtice in that Matter.

Ordered,

That no Member of this Houſe do preſume to appear on *Monday* next at the pretended Trial of the Earl of *Orford*, upon pain of incurring the utmoſt Diſpleaſure of this Houſe.

The Copy of the Anſwer of *Charles* Lord *Halifax*, ſent down from the Lords, to the Articles of Impeachment exhibited againſt him, and the Paper ſent down from the Lords, entituled, *The Anſwer of* John *Lord* Haverſham, *to the Charge exhibited againſt him*, being never read in the Houſe of Commons, cannot be printed among the foregoing Proceedings.

They are inſerted in the Lords Proceedings, Vol. V.

NUMBER XXXV.

Proceedings in the Houſe of Commons and Houſe of Lords relating to JAMES BOUCHER, *Gent.* *

Veneris, 17 die Decembris, 1703.

A Meſſage from Her Majeſty, by Sir *David Mitchell*, Gentleman-Uſher of the Black Rod.

Mr. Speaker,

The Queen commands this Honourable Houſe to attend Her Majeſty immediately in the Houſe of Peers.

Accordingly *Mr. Speaker*, with the Houſe, went up to attend Her Majeſty, and being return'd, *Mr. Speaker* reported, That Her Majeſty had been pleaſed to give the Royal Aſſent to *An Act for granting an Aid to Her Majeſty by a Land-Tax*; and afterwards to make a moſt gracious Speech to both Houſes, of which he had deſired, and obtained a Copy, which he read to the Houſe, and is as follows, *viz.*

My Lords and Gentlemen,

" I Think it proper, upon this Occaſion, to acquaint you, That I " have had unqueſtionable Informations of very ill Practices and " Deſigns carried on in *Scotland* by Emiſſaries from *France*, which might " have proved extremely dangerous to the Peace of theſe Kingdoms; as " you will ſee by the Particulars, which ſhall be laid before you, as " ſoon as the ſeveral Examinations, relating to this Matter, can be " fully perfected, and made publick without Prejudice: In the mean " Time, I make no Doubt, but by this ſeaſonable Diſcovery, I ſhall be " able to give ſuch Directions for our Security, as will effectually pre- " vent any ill Conſequences from theſe pernicious Deſigns.

Gentlemen of the Houſe of Commons,

" I am very ſenſible of your great Readineſs and Affection for the " Publick Service, by preſenting me ſo early in the Seſſions with a con- " ſiderable Part of your Supplies: I depend entirely upon your continu- " ing with the ſame Zeal to diſpatch the Remainder of them; that ſo " we may be prepared to give the ſpeedieſt Aſſiſtance to our Allies, and " to defeat the malicious Deſigns of our Enemies; who cannot be more " induſtrious to contrive the Ruin of this Kingdom, and of the Pro- " teſtant Religion, than I ſhall always be vigilant and careful, both for " their preſent Preſervation, and for their future Security."

Reſolved, Nemine Contradicente,

That an humble Addreſs be preſented to Her Majeſty, returning the Thanks of this Houſe for Her moſt gracious Speech from the Throne, and for the communicating the Diſcovery Her Majeſty hath made of the wicked Deſigns againſt Her Government; with Aſſurance, That this Houſe will ſtand by and ſupport Her Majeſty and Her Government againſt all Pretenders, and all Her Enemies whatſoever.

Ordered,

That a Committee be appointed to draw up the ſaid Addreſs; and a Committee was appointed accordingly.

Ordered,

That the ſaid Addreſs be drawn up on the ſaid Reſolution, and alſo upon the Debate of the Houſe.

Sabbati, 18 *die Decembris*, 1703.

Mr. *Bromley* reported from the Committee, to whom it was referr'd to draw up an Addreſs to be preſented to Her Majeſty, (according to the Order of Yeſterday) That they had drawn up an Addreſs accordingly, which they had directed him to report to the Houſe; which he read in his Place, and afterwards deliver'd in at the Table, where the ſame was read.

Reſolved, Nemine Contradicente,

That this Houſe doth agree with the Committee in the ſaid Addreſs.

Reſolved,

That the ſaid Addreſs be preſented to Her Majeſty by the whole Houſe.

Ordered,

That ſuch Members of this Houſe as are of Her Majeſty's moſt Honourable Privy-Council, do humbly know Her Majeſty's Pleaſure, when ſhe will be attended by this Houſe.

Ordered,

That ſome Members be appointed to ſearch the Lords Journals, as to their Proceedings in relation to the Examination of any Perſons who are diſcovered to have a Deſign againſt Her Majeſty's Government.

And they were appointed accordingly.

The humble Addreſs of the Houſe of Commons to the Queen.

Moſt Gracious Sovereign,

" WE Your Majeſty's moſt dutiful and loyal Subjects, the Commons " in Parliament aſſembled, do return Your Majeſty our moſt " humble and hearty Thanks for Your moſt gracious Speech from the " Throne.

" We are truly ſenſible of your Majeſty's great Goodneſs, and " of the Confidence You repoſe in us, by communicating the Diſ- " covery of the ill Practices and Deſigns that have been carried on

* To be read before his Trial, in Vol. V. Page 510. Theſe Proceedings were publiſhed by Order of the Two Houſes of Parliament, and ſhew the Reaſons both Houſes went upon: Which, with *The Precedents out of the Journals of the Houſe of Lords and Houſe of Commons*, will render them uſeful to Poſterity.

" in

" in *Scotland*, by Emiſſaries from *France*; whereby we have an Opportu-
" nity to repeat our unanimous Reſolution to ſtand by and ſupport Your
" Majeſty, and the Succeſſion in the Proteſtant Line, as limited by
" Law, againſt all Pretenders, and all Your Majeſty's Enemies whatſo-
" ever.

" We want Words to expreſs to Your Majeſty the Deteſtation we have
" of any Conſpiracies and Attempts to diſturb the Peace and Proſperity
" of Your happy Government; under which we muſt think our Security
" ſufficiently provided for, ſince Your Majeſty has been pleaſed to give
" ſuch Directions as may prevent all ill Conſequences from them.

" It is great Satisfaction to us, to find, That the Supplies we have
" already given are ſo acceptable to Your Majeſty: We ſhall go on with
" the ſame Readineſs and Zeal to diſpatch the Remainder of them, that
" we may enable Your Majeſty to give the ſpeedier Aſſiſtance to your
" Allies, and to defeat the malicious Deſigns of Your Enemies.

" Your faithful Commons can never have the leaſt Diſtruſt of Your
" Majeſty's Vigilance and Care for the Preſervation of the Proteſtant
" Intereſt in general, of the Monarchy, and the Church of *England*, as
" by Law eſtabliſhed: And we humbly beg Leave to aſſure Your Ma-
" jeſty, that we will never be diſcouraged, but will continue inceſſant our
" Endeavours, by all proper Methods, to tranſmit them ſecurely ſettled
" to Poſterity."

Lunæ, 20 *die Decembris*, 1703.

Mr. *St. John* reported, That the Members appointed to ſearch the Lords Journals, as to their Proceedings, in relation to the Examination of any Perſons, who are diſcovered to have a Deſign againſt Her Majeſty's Government, had ſearched the Lords Journals accordingly; and he read in his Place what they had found therein, and delivered the ſame in at the Table, where the ſame was again read.

A Motion being made, and the Queſtion being propoſed, That an humble Addreſs be preſented to Her Majeſty, ſetting forth the great Concern this Houſe hath for Her Majeſty's Royal Prerogative, and the Reſolution of this Houſe to ſupport the ſame; and that no Perſons accuſed for Crimes, who are Her Majeſty's Priſoners, ought to be taken out of the Cuſtody of the Crown, without Her Majeſty's Leave; and a Debate ariſing in the Houſe thereupon;

And a Motion being made, and the Queſtion being put, That the Debate be adjourned,

It paſſed in the Negative.

Then the main Queſtion being put;

Reſolved, That an humble Addreſs be preſented to Her Majeſty, ſetting forth the great Concern this Houſe hath for Her Majeſty's Royal Prerogative, and the Reſolution of this Houſe to ſupport the ſame; and that no Perſons accuſed for Crimes, who are Her Majeſty's Priſoners, ought to be taken out of the Cuſtody of the Crown, without Her Majeſty's Leave.

Ordered, That a Committee be appointed to draw up the ſaid Addreſs;

And a Committee was appointed accordingly.

Ordered, That it be an Inſtruction to the ſaid Committee, That they do draw up the ſaid Addreſs upon the ſaid Reſolution, and upon the Debate of the Houſe.

Martis, 21 *die Decembris*, 1703.

Mr. Speaker reported, That the Houſe did Yeſterday attend Her Majeſty at St. *James*'s, and preſented to Her their Addreſs; and that Her Majeſty was pleaſed to give a moſt gracious Anſwer, as followeth:

Gentlemen,

" I Am very well pleaſed with your Aſſurances of diſpatching the Sup-
" plies, and with the other Parts of this Addreſs, in which you ex-
" preſs ſo much Duty and Readineſs to ſupport, and to truſt me.

" You may depend upon my Willingneſs to join my Endeavours with
" you, in ſecuring to Poſterity the Proteſtant Succeſſion in the Monar-
" chy, and the Church of *England*, as it is eſtabliſhed by Law."

Mr. *St. John* reported from the Committee, to whom it was referred to draw up an Addreſs upon the Reſolutions of Yeſterday, that they had drawn up an Addreſs accordingly, which they had directed him to report to the Houſe; which he read in his Place, and afterwards delivered in at the Table, where the ſame was read, and (with an Amendment) agreed unto by the Houſe.

Reſolved,

That the ſaid Addreſs be preſented to Her Majeſty by the whole Houſe.

Ordered,

That ſuch Members of this Houſe as are of Her Majeſty's moſt Honourable Privy-Council do humbly know Her Majeſty's Pleaſure, when ſhe will be attended by this Houſe.

Mercurii, 22 *die Decembris*, 1703.

Mr. Comptroller acquainted the Houſe, That Her Majeſty having been humbly waited upon to know Her Pleaſure, when ſhe would be attended by this Houſe: Her Majeſty has been pleaſed to appoint To-morrow at Four o'Clock in the Afternoon, at St. *James*'s.

Jovis, 23 *die Decembris*, 1703.

The Humble ADDRESS of the Houſe of Commons to the Queen.

Moſt Gracious Sovereign,

" WE Your Majeſty's moſt dutiful and loyal Subjects, the Commons
" of *England* in Parliament aſſembled, beg Leave humbly to
" lay before Your Majeſty the great and juſt Concern we are under, to
" ſee any Violation of Your Royal Prerogative.

" Your faithful Commons believe the Adminiſtration of the Govern-
" ment beſt ſecured when it is left to your Majeſty, with whom the Law
" has entruſted it; and have ſo firm a Dependance upon Your Majeſty's
" Affection to Your People, and Your great Wiſdom, that they can ne-
" ver apprehend ſo little Danger from any Conſpiracy, as when the Ex-
" amination thereof is under Your Majeſty's Directions.

" We are therefore ſurprized to find, That when ſeveral Perſons, ſuſ-
" pected of Treaſonable Practices againſt Your Majeſty, were taken into
" Cuſtody by Your Meſſengers, in order to be examined; the Lords, in
" Violation of the known Laws of the Land, have wreſted them out of
" Your Majeſty's Hands, and without Your Majeſty's Leave or Know-
" ledge, in a moſt extraordinary Manner, taken the Examination of
" them ſolely to themſelves; whereby a due Enquiry into the evil Prac-
" tices and Deſigns againſt Your Majeſty's Perſon and Government may,
" in great Meaſure, be obſtructed.

" Your loyal Commons do therefore moſt earneſtly deſire Your Ma-
" jeſty to ſuffer no Diminution of that Prerogative, which, during
" Your Majeſty's Reign, they are confident will always be exerted for
" the Good of Your People.

" And we humbly beg Leave to aſſure Your Majeſty, That as we are
" reſolved by timely and effectual Supplies to enable Your Majeſty to
" carry on the War, which You have ſo glorioufly begun; ſo we will,
" to the utmoſt of our Power, ſupport Your Majeſty in the Exerciſe of
" Your juſt Prerogative at Home, and the aſſerting of it againſt all In-
" vaſions whatſoever."

Lunæ, 3 *die Januarii*, 1703.

Mr. Speaker reported, That he, with the Houſe, did, before the Receſs, preſent to Her Majeſty their humble Addreſs of the twenty-firſt of *December* laſt; and that Her Majeſty was pleaſed, thereupon, to give this moſt gracious Anſwer.

Gentlemen,

" I Have had the Satisfaction to find, that the Matter which may have
" occaſioned this Addreſs is now at an End.

" I return you many Thanks for the Concern you expreſs for my Pre-
" rogative; and for your repeated Aſſurances of making the Supplies ef-
" fectual, which will be greatly for the Honour and Advantage of the
" Kingdom.

" I ſhall be careful not to give way to any Invaſion of the Prerogative
" of the Crown, or of the Rights and Liberties of the People."

Upon this Addreſs of the Houſe of Commons, the Houſe of Lords drew up the following Repreſentation.

The humble Repreſentation of the Right Honourable the Lords Spiritual and Temporal in Parliament aſſembled, preſented to Her Majeſty, on Tueſday *the Eighteenth Day of* January, 1703; *and Her Majeſty's moſt gracious Anſwer thereunto* *.

Die Lunæ, 17 *Januarii*, 1703.

May it pleaſe Your moſt Excellent Majeſty,

WE Your Majeſty's moſt dutiful and loyal Subjects, the Lords Spiritual and Temporal in Parliament aſſembled, find ourſelves under an unhappy Neceſſity of making this our humble Application to the Throne, upon Occaſion of an Addreſs preſented to Your Majeſty by the Houſe of Commons, the twenty-third Day of *December* laſt, and ſince that Time publiſhed to the whole Nation in Print; by which the Houſe of Lords is charged with the Violation of your Royal Prerogative, and of the known Laws of the Land; with wreſting Perſons ſuſpected of Treaſonable Practices, and taken into Cuſtody by Meſſengers, out of Your Majeſty's Hands, without Your Leave or Knowledge, and in a moſt extraordinary Manner taking the Examination of them ſolely to themſelves; whereby a due Enquiry into the evil Practices and Deſigns againſt Your Majeſty's Perſon and Government might in great meaſure be obſtructed. And they conclude their Addreſs by moſt earneſtly deſiring Your Majeſty to ſuffer no Diminution of Your Prerogative, and promiſe to ſupport You in the aſſerting it againſt all Invaſions whatſoever. It is not poſſible for us to remain ſilent under this heavy Charge, ſo unjuſtly, and without the leaſt Ground or Colour to be fixed upon the whole Body of the Peers, which tending directly to create an ill Opinion of us in Your Majeſty, puts us under an inevitable Neceſſity of vindicating both the Legality, and the dutiful Manner of our Proceeding.

The Expreſſions in the Addreſs of the Houſe of Commons are ſo very harſh and undecent, that we may truly affirm, the like were never uſed of the Houſe of Peers in any Age; not even by that Aſſembly, which, under the Name of the Houſe of Commons, took upon them not only to aboliſh the Houſe of Lords, but to deſtroy the Monarchy. We ſhall carefully avoid making Returns of that kind: We conſider too much what we owe to ourſelves; and we know too well the profound Reſpect due to Your Royal Perſon, to let any Provocation tranſport us ſo, as to uſe Words unfit to be offered by us to our Sovereign.

The Matter of this Addreſs is no leſs injurious to us than the Terms; there was not the leaſt Occaſion for a juſt Objection to any Part of our Conduct in that Buſineſs to which the Addreſs relates. The Proceeding was ſtrictly juſtifiable by the known Laws and Cuſtoms of Parliament; it was carried on with the utmoſt Reſpect to Your Majeſty, and with true Zeal for the Safety of your Perſon and Government; all that was done was agreed to by the concurrent Opinion of the Houſe, without the leaſt Objection from any of our Members, who have the Honour of ſerving your Majeſty in Your great Offices and Employments.

We humbly repreſent to Your Majeſty, That, by the known Laws and Cuſtom of Parliaments, the Houſe of Peers has an undoubted Right, in Caſes where they conceive it to be for the Good and Safety of Your Majeſty and the Kingdom, to take Examinations of Perſons charged with criminal Matters, whether ſuch Perſons be then in Cuſtody or not, and alſo to order the Perſons ſo to be examined to be taken into Cuſtody of Your Majeſty's ſworn Officers, attending the Houſe during ſuch Examinations, or to commit them to any other ſafe Cuſtody that they ſhall

* *Die Martis*, 18 *Januarii*, 1703. It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the humble Repreſentation of this Houſe, preſented to her Majeſty this Day, and her Majeſty's moſt gracious Anſwer thereunto, ſhall be forthwith printed and publiſhed.

Matth. Johnſon, Cleric' Parliamentor'

think

think proper; and to reſtrain others, if they ſee Cauſe from having Acceſs to, or Communication with them: The Houſe of Lords has exerciſed this Right from Time to Time, as Occaſions have required, without Objection. Our Records are fill'd with Precedents which warrant our Claim in every Part of it; and we preſume to affirm to Your Majeſty, That the drawing this Right into Queſtion, at any Time, cannot but be of dangerous Conſequence to the Liberties and Safety of the People, and to the Conſtitution of the Government, as tending to avoid, or render, in great meaſure, ineffectual, the Enquiries of Parliaments which are ſo abſolutely neceſſary, eſpecially where many and great Perſons are engaged in dangerous Deſigns againſt the Government; or where ill Miniſters abuſe their Favour towards the oppreſſing or enſlaving of the People. Your Majeſty's Wiſdom and Goodneſs make us ſecure at preſent againſt all Influences of that kind, and we unanimouſly and heartily pray we may long enjoy the Bleſſings of Your Reign. But if it happens, in future Times, that ill Men ſhould gain too great a Degree of Favour with our Princes, how eaſy will it be for them to ſtifle or defeat all Parliamentary Enquiries into their Crimes? For if the being in Priſon, or in the Hands of a Meſſenger, will protect Men from being examined in the Houſe of Lords, or from being put into the Cuſtody of the proper Officers of the Houſe, during the Examination, and debarr'd from converſing with others; it will certainly be always in the Power of Favourites to cauſe thoſe who can be Witneſſes againſt them, as well as the Accomplices of their Deſigns, to be taken into Cuſtody. And if Perſons in Cuſtody are out of the Reach of the Houſe of Lords, who are the Hereditary Counſellors of the Crown, and in whom a judicial Power is lodged by the Conſtitution; it is not to be imagined that the Commons can pretend to a greater Power of the examining, committing, or reſtraining them.

No Houſe of Commons, 'till now, has given Countenance to this dangerous Opinion, which does ſo directly tend to the rendering ill Miniſters ſafe from the Examination of Parliaments: And we are perſuaded, no Houſe of Commons hereafter will aſſert ſuch a Notion, becauſe they are not wont eaſily to part with a Power they have aſſumed; and it is certain that they have ſeveral Times taken upon them to exerciſe an Authority like that which they have ſo ſeverely reflected on in their Addreſs.

This Conſideration gave us the greater Aſtoniſhment, to find our Proceedings repreſented in the ſtrange Terms of wreſting Priſoners out of Your Majeſty's Hands, and taking the Examination of them ſolely to ourſelves. We believe the ordering Perſons to be examined in that High Court, where Your Majeſty is always preſent, in Conſideration of Law, and in that great Council where You may be preſent in Your Royal Perſon, as often as You pleaſe, will never be thought an Excluſion of Your Majeſty from the Examinations, if that was intended to be inſinuated by ſaying, We had taken the Examinations ſolely to ourſelves. Having thus laid before Your Majeſty what it is we claim, and muſt inſiſt on, as the indiſputable Right of the Houſe of Peers; which was never thought, in the Time of Your Royal Anceſtors, to be prejudicial to the juſt Prerogatives of the Crown, and which is manifeſtly neceſſary for the ſecuring the Liberties of Your People, whereof we are aſſured Your Majeſty will have an equal Care; We humbly beg Leave to lay before You a ſhort State of the particular Matter of Fact relating to theſe Priſoners, not doubting, but when the whole Proceeding is known to Your Majeſty, it will be approved not only as lawful, but every way reſpectful to Your Majeſty.

On *Tueſday* the 14th of *December* the Houſe of Lords was inform'd, that ſeveral Perſons had been ſeiz'd by the Cuſtom-Houſe Officers on the Coaſt of *Suſſex*, as they came from *France*, and that amongſt them there was one *Boucher*, who was capable of making conſiderable Diſcoveries, having been in Arms in the *French* Service for many Years, and Gentleman of the Horſe and Aid-de-Camp to the late Duke of *Berwick*, who ſtands attainted of High-Treaſon, and who had been ſecretly in *England* ſeveral Times before; that it was probable, if he was ſtrictly examined, he might be brought to confeſs, ſince he ſaw his Life in apparent Danger; but that he was a bold Man, and likely to attempt an Eſcape on that very Account, if he was not carefully look'd after: And the Houſe was alſo told, that there was a general Remiſſneſs both in the taking, ſearching, and looking to ſuch Priſoners, which did afterwards appear very evidently in the Examinations that were taken. Upon this Information, the Earl of *Nottingham*, Your Majeſty's Principal Secretary of State, acquainted the Houſe, that he had not heard of *Boucher*'s Name particularly, but had ſent Meſſengers to bring one *Ogilby*, and the other Priſoners who had been apprehended by the Cuſtom-Houſe Officers, to Town, and that he believed the Meſſengers would do their Duty, but he would not be anſwerable for them.

After this Account of the Priſoners, and of what had been done in order to ſecure them, the Houſe thought themſelves obliged in Duty to Your Majeſty, and for the Publick Safety, at a Time when the Kingdom is engaged in an open War with *France*, and that there are too juſt Grounds to apprehend the dangerous Practices of *French* Emiſſaries; to make an humble Addreſs to Your Majeſty, that particular Care might be taken for ſecuring the Perſons of *Boucher*, and of thoſe who were taken with him, and that none might be ſuffered to ſpeak with them 'till they were examined.

The next Day, Your Majeſty's gracious Anſwer to this Addreſs was reported to the Houſe, That Care had been taken to ſecure the Priſoners, and that Your Majeſty would give Orders, that Nobody ſhould ſpeak with them till they were examined. Thereupon, the Lords enter'd into a farther Conſideration of the Importance of this Matter; and conceiving nothing to be more likely to bring Priſoners, who had forfeited their Lives, to a full Diſcovery of the Truth, than to find themſelves under the Enquiry of a Parliament, they thought it would be of Publick Service for them to take the Examinations of theſe Perſons; and accordingly an Order was made, that no Perſons ſhould ſpeak with the Priſoners, till they had appeared at the Bar of the Houſe.

On the ſixteenth Day, the Earl of *Nottingham* informing the Houſe of Lords, that the Priſoners were brought to Town; the Uſher of the Black Rod was ordered to take them into his Cuſtody, in order to their Examination, and to keep them ſeparate, and in cloſe Cuſtody (as Your Majeſty had before directed), and it being thought moſt proper, from the Nature of the Thing, that the Examination ſhould be by a Committee of Lords, rather than by the whole Houſe, it was reſolved accordingly.

We beg Leave to mention to your Majeſty a Matter of Fact which ſatisfied the Lords, that their Reſolution to take the Examinations of *Boucher*, and the Perſons apprehended with him, was neither unknown or diſagreeable to Your Majeſty. On the ſame Day when that was order'd, being the fifteenth of *December*, the Lords reſolved to examine Sir *John Maclean*, a very dangerous Perſon, as was repreſented to the Houſe, who then ſtood committed in the Hands of a Meſſenger; and for that Purpoſe order'd him to be brought to the Houſe the next Day, having, as they then thought, very good Grounds to believe it might prove of great Service to Your Majeſty. Sir *John Maclean* was brought to the Houſe, according to the Order; but Your Majeſty being pleaſed ſo far to take Notice of this Order, as to ſignify to the Houſe by the Lord Steward, That Sir *John Maclean* had been in part examined already, and that Your Majeſty thought it not proper to have that Buſineſs taken out of the way of Examination it was then in, but that Your Majeſty would, in a ſhort Time, communicate it to the Houſe; the Lords immediately acquieſced in your Majeſty's Opinion, and ſent back Sir *John Maclean* to the Place from whence he was brought. It was with this Diſpoſition of Mind the Lords acted in this whole Matter; and if Your Majeſty, who, no doubt, had the ſame Notice of both Orders, had thought any other Method of the Examination of *Boucher*, and the Perſons taken with him, more proper than that of the Lords; they had reaſon to conclude Your Majeſty would have intimated it at the ſame time, and moſt certainly the Houſe would have had a like Deference for Your Royal Judgment in that Inſtance alſo.

The Lords Committees * appointed to examine the Priſoners, proceeded with all poſſible Diſpatch, and made their Report to the Houſe on the twenty-firſt of *December*; upon Conſideration of the Report, the Houſe found it requiſite to commit *Boucher* to the Priſon of *Newgate* for High-Treaſon; and the Lords Committees having ſubmitted to the Judgment of the Houſe, whether ſeveral Parts of the Examinations, referred to in their Report, ſhould be laid open to the Houſe, or put into any other Way of being farther enquired into, or proſecuted; the Houſe, out of a full Aſſurance they had, that, when the Matter of Fact ſhould be laid before Your Majeſty, You would certainly give ſuch Orders thereupon, as were every way ſuitable to Your Royal Prudence, and tender Care of the Publick Safety, did unanimouſly reſolve, without ſo much as ſuffering thoſe Parts of the Report to be laid open to the Houſe, That an humble Addreſs ſhould be made from the Houſe to Your Majeſty by the Lord Steward and the Duke of *Somerſet*, (Two of the Lords Committees, to whom the Examination had been referr'd) laying before Your Majeſty the whole Report, with all Matters relating thereto, and humbly deſiring Your Majeſty to give Order, that *Boucher* ſhould be proſecuted by *Mr. Attorney-General* for High-Treaſon; and that as to the Commitment, Proſecution, or Diſcharge of the other Priſoners mentioned in the Report, You would be pleaſed to give ſuch Directions, as ſhould ſeem moſt proper to Your Royal Wiſdom. Thus, as the whole Affair was enter'd upon out of Zeal for Your Majeſty's Preſervation, and the Safety of the Kingdom, and was carried on and concluded with all poſſible Reſpect to You; ſo we had the Comfort to reſt aſſured, that our Behaviour was no leſs graciouſly accepted by Your Majeſty, from the Anſwer You were pleaſed to make the ſame Day to our laſt Addreſs on this Subject, and which was reported to us on the twenty-ſecond of *December*, by the Duke of *Somerſet*, whereby Your Majeſty was pleaſed to ſignify to the Houſe, with Your accuſtomed Goodneſs, that You would give Order for every Thing as the Lords had deſired.

Madam, this is a true and juſt Account of our Proceedings, which have been ſo ſtrangely miſrepreſented, and to which no Exception can poſſibly be taken by any Perſons rightly inform'd. For as we had Your Royal Approbation of all that was done; ſo the Houſe of Commons could have had no Pretence of Objection, if they had taken the uſual Parliamentary Methods of deſiring to be inform'd of what we had done, and of the Grounds of our Proceedings, before they had approached Your Majeſty with ſuch a Repreſentation of them.

Their carrying this unprecedented Addreſs to Your Majeſty, in ſo haſty a Manner, gives us almoſt as great Trouble as the hard Uſage we find in it. The ancient, known, and indeed, only effectual Method of preſerving a good Correſpondence between the Two Houſes of Parliament, has been by Conferences. If at any Time either Houſe conceived they had a reaſonable Ground to object againſt the Proceedings of the other, Conferences have been deſired, and the Matter in Debate between them fairly diſcuſs'd, and thereby Miſtakes have been clear'd for the moſt part, and a good Underſtanding cultivated, and a mutual Reſpect preſerved; which is always highly requiſite in the Nature of our Conſtitution, but more eſpecially neceſſary in this Time of War and Danger.

Had the Houſe of Commons thought fit to have purſued this Method upon this Occaſion; we ſhould have been able to have given them entire Satisfaction, not only of the Lawfulneſs of all we had done, but of the juſt and weighty Grounds upon which we took the Examinations of theſe Perſons into our own Hands: Or, at leaſt, if they could have convinced us of any Miſtake, we ſhould have given them any reaſonable Satisfaction.

But, without making any ſuch previous Step, the Houſe of Commons have made an Appeal directly to the Throne againſt the Houſe of

* The Committee of Lords, mentioned in this Repreſentation, who were appointed to examine the Priſoners brought out of *Suſſex*, were Seven, *viz.* the Dukes of *Devonſhire* and *Somerſet*, the Earls of *Sunderland* and *Scarborough*, the Lords *Townſhend*, *Wharton*, and *Somers*. They were choſen in the Houſe by Ballot.

Lords, and charged them, though moſt unjuſtly, with Attempts of the higheſt Nature. Nothing like this was ever done before, and out of our hearty Concern for the Preſervation of our happy Conſtitution, we hope the ſame Thing will never be done again. We know Your Royal Heart is unmoveably fixed on preſerving the Liberties of Your People, and tranſmitting them entire to Poſterity; but if in After-Times the Houſes of Parliament ſhould be appealing againſt one another to the Crown, (for if ſuch a Courſe be juſtifiable in the Houſe of Commons, the ſame Method may be taken by the Lords) as Your Majeſty is now ſenſible how great Difficulties it neceſſarily brings upon a good Prince; ſo it is eaſy to foreſee (and we cannot think of it without Terror) how fatal the Conſequences may be in the Reign of an ill-deſigning Prince, and what Advantages may be taken from it, for utterly ſubverting the beſt order'd Form of Government in the World. There are Examples Abroad *, where Proceedings of this kind have ended in the Overthrow of the Liberties of the People, which makes us the more apprehend the Beginning of them among ourſelves. Your Majeſty's great Judgment cannot but readily diſcern, whither it does naturally tend, for one Houſe of Parliament to be exciting and earneſtly deſiring the Sovereign to exert a real or ſuppoſed Prerogative againſt the other Houſe. It is not eaſy to imagine what the Commons could expect of Your Majeſty from ſuch an Application; the Lords have never entertain'd a Thought of uſing this dangerous Method, whatever Occaſion may have been given within the Compaſs of late Years. And we promiſe Your Majeſty we will always endeavour to preſerve a good Underſtanding with the Houſe of Commons, and ſhall never think it too dear to procure that Union at any Rate, unleſs that of delivering up thoſe Rights and Powers which are lodged in us by the Law, and without which, the Conſtitution cannot ſubſiſt.

We ſhall never be guilty of the Preſumption of preſcribing to Your Majeſty when or againſt whom You ſhould exert your Prerogative; but we will be always ready to aſſiſt You in the Support of all the juſt Rights of the Crown, as well as in maintaining the Liberties of the Subject, which we know are no leſs dear to Your Majeſty.

It may with Modeſty and Truth be affirm'd, that the Lords have, in all Times, been the ſureſt and moſt natural Bulwark of the Prerogatives of the Crown, they being (as Your Royal Grandfather, of ever bleſſed Memory, was pleaſed to expreſs it) an excellent Screen and Bank between the Prince and the People, to aſſiſt each againſt any Encroachment of the other.

We will never contribute by any Act of ours to the Diminution of the Rights of the Crown, nor, as far as we are able, will ſuffer it in others. We cannot act otherwiſe, without hurting ourſelves in the higheſt Degree; being throughly convinced, that the Preſervation of the legal Prerogative is not only the ſureſt Way to ſecure our own Privileges, but of abſolute Neceſſity, for the happy and rightful Adminiſtration of the Government. And we hope the Houſe of Commons will, in all Times to come, ſpeak and act with that Regard to the Prerogative which they ſeem to have taken up lately.

There remains one Particular more, which we will only name to Your Majeſty, becauſe we reſt ſatisfied it cannot have Weight any where; that is, the Inſinuation in the Addreſs, as if the Examination of theſe Priſoners by the Lords, was in order to obſtruct the Enquiry into the Deſigns againſt Your Majeſty's Perſon and Government; or at leaſt, that it was likely to produce ſuch an Effect. Our dutiful Zeal for Your Majeſty's Government, and our warm Concern to diſcover all Deſigns, and oppoſe all Practices againſt it, are too well known to the World, that any Suggeſtions of that Sort ſhould make the leaſt Impreſſion to our Diſadvantage; and we are very ſure, 'twas no Suſpicion of that Nature which gave the true Riſe to this very ſharp Addreſs. It is eaſy to determine, whether a hearty and forward Undertaking to ſearch into the Deſigns of Your Enemies, or the ſeeking Occaſion to object to, and interrupt ſuch Endeavours, be moſt likely to obſtruct the Diſcovery of the pernicious Practices of Traitors.

Moſt Gracious Sovereign,

We moſt humbly aſk Pardon for preſuming to give Your Majeſty the Trouble of this long Repreſentation, which has proceeded from the paſſionate Concern we have to ſtand not only acquitted, but entirely approved in the Judgment of ſo excellent a Queen, and ſo juſtly beloved of all her Subjects.

We depend upon Your Juſtice as well as Your Goodneſs, that nothing can do us Prejudice (from whatſoever Hands it comes) in Your Royal Opinion, while we continue to act in that Station where we are placed by the Form of the *Engliſh* Government, according to the Laws and Cuſtoms of Parliament, with all imaginable Reſpect and Duty to Your Self, and all poſſible Zeal for the Safety and Happineſs of Your Kingdom.

Give us Leave to conclude this our humble Addreſs with this firm Promiſe, that no Dangers, no Reproaches, nor any Artifices whatſoever, ſhall deter or divert us from uſing our utmoſt Endeavours, from Time to Time, in diſcovering and oppoſing all Contrivances and Attempts againſt Your Royal Perſon and Government, and the Proteſtant Succeſſion, as by Law eſtabliſh'd.

Her Majeſty's moſt Gracious ANSWER to the Repreſentation.

My Lords,

"I AM very ſorry for any Miſunderſtandings that happen between the Two Houſes of Parliament, which are ſo inconvenient for the Publick Service, and ſo uneaſy to me, that I cannot but take Notice with "ſatisfaction of the Aſſurances you give me, that you will carefully avoid "all Occaſions of them.

"I thank you for the Concern you expreſs for the Rights of the Crown, "and for my Prerogative; which I ſhall never exert ſo willingly as for "the Good of my Subjects, and the Protection of their Liberties."

Sabbati, 22 die Januarii, 1703.

The Commons order'd, That ſome of their Members be appointed to ſearch the Journals of the Houſe of Lords, touching their Proceedings upon the late Addreſs of this Houſe to Her Majeſty, and their Repreſentation thereupon; and alſo to ſearch Precedents concerning Commitments by the Houſe of Lords, in Caſes where the Perſon has been in the Cuſtody of the Crown, and report the ſame to the Houſe; and ſeveral Members were appointed accordingly.

Sabbati, 29 die Januarii, 1703.

Mr. *Toke* reported, That the Members appointed to ſearch the Journals of the Houſe of Lords, touching their Proceedings upon the late Addreſs of this Houſe to Her Majeſty, and the Repreſentation thereupon; and alſo to ſearch Precedents, concerning Commitments by the Houſe of Lords, in Caſes where Perſons have been in the Cuſtody of the Crown, had ſearched the ſame accordingly; and he read in his Place what they found therein, and afterwards delivered the ſame in at the Table.

Reſolved, That this Houſe will, upon *Tueſday* Morning next, take the ſaid Report into Conſideration.

Martis, 1 die Februarii, 1703.

Reſolved, That this Houſe will, upon *Thurſday* Morning next, take into Conſideration the Report of the Journal of the Houſe of Lords, with relation to the Addreſs of this Houſe to Her Majeſty, and the Lords Repreſentation.

Jovis, 3 die Februarii, 1703.

The Report of the Journal of the Houſe of Lords, relating to the Addreſs of this Houſe, and the Repreſentation of the Houſe of Lords, was read.

Reſolved, That an humble Addreſs be preſented to Her Majeſty, to clear this Houſe from the Miſrepreſentation of the Houſe of Lords, in their Repreſentation preſented to Her Majeſty.

Ordered, That a Committee be appointed to draw up the ſaid Addreſs.

And a Committee was appointed accordingly.

Veneris, 18 die Februarii, 1703.

Mr. *Granville* reported from the Committee appointed to draw up an humble Addreſs to be preſented to Her Majeſty, to clear this Houſe from the Miſrepreſentation of the Houſe of Lords, in their Repreſentation preſented to Her Majeſty, That they had drawn up an Addreſs accordingly, which they had directed him to report to the Houſe; which he read in his Place, and afterwards deliver'd in at the Table, where the ſame was read, and (with an Amendment) agreed unto by the Houſe.

Reſolved, That the ſaid Addreſs be preſented to Her Majeſty by the whole Houſe.

Ordered, That ſuch Members of this Houſe as are of Her Majeſty's moſt Honourable Privy-Council, do humbly know Her Majeſty's Pleaſure, when ſhe will be attended by this Houſe.

Lunæ, 21 die Februarii, 1703.

Mr. Secretary *Hedges* acquainted the Houſe, That Her Majeſty having been (according to Order) waited upon, to know when ſhe would be attended by this Houſe, Her Majeſty has been pleaſed to appoint this Afternoon, at Four of the Clock, at St. *James*'s.

The humble ADDRESS of the Houſe of Commons to the Queen.

Moſt Gracious Sovereign,

YOUR Majeſty having with Great Goodneſs declared from the Throne to Your Parliament, That divers ill Practices and Deſigns had been carried on in *Scotland*, by Emiſſaries from *France*, which might have proved extremely dangerous to the Peace of theſe Kingdoms; and that You would lay the Particulars before Your Parliament, as ſoon as the ſeveral Examinations could be fully perfected, and made publick without Prejudice: We Your Majeſty's moſt dutiful and loyal Commons, reſting ſecure and ſatisfied in Your Majeſty's great Wiſdom and Care, moſt thankfully acknowledged the Confidence You have been pleaſed to repoſe in us.

But finding upon the Lords Journals, That their Lordſhips, the very ſame Day, made two Orders, one to remove Your Majeſty's Priſoners out of Your Cuſtody into their own, and the other to commit their Examination ſolely to a Committee of ſeven Lords, choſen and appointed by themſelves; by which Your Majeſty ſeem'd excluded from any Power over the ſaid Priſoners:

Your loyal Commons, juſtly ſenſible of the dangerous Conſequences of ſuch Proceedings, thought themſelves obliged to declare their Concern at this Violation of Your Royal Prerogative, and the known Laws of the Land, in an humble Addreſs preſented to Your Majeſty.

Your faithful Commons are well aſſured, when this Matter comes to be rightly ſtated and underſtood, a Zeal ſo well intended, and ſo well grounded, will rather be imputed to them as meritorious, than liable to Exception; and therefore, ſince their humble Addreſs has been ſo artfully miſrepreſented by the Lords in their late Repreſentation, preſented to Your Majeſty on *Tueſday* the 18th of *January*, and publiſhed and ſpread with unuſual Induſtry through all Parts of the Kingdom, they look upon themſelves under an indiſpenſible Neceſſity of appearing before Your Majeſty in their own Juſtification.

Their Lordſhips think fit to take Offence at the Manner and Words of our Addreſs, and accompany this Exception with Reflections and Inſinuations more harſh and more odious than the moſt opprobrious Language: But as we made uſe of no Terms but what were ſuitable to the Occaſion, ſo it will appear by Precedents, that the ſame have been frequently and reciprocally uſed by both Houſes to each other; nor could the Commons, in reſpect to Your Majeſty, aſſert Your Royal Prerogative in Words of leſs Force than thoſe in which they have vindicated their own Privileges.

Whatever Expreſſions our Zeal for Your Majeſty, and the Publick, might have inſpired, we could never have offered to our Sovereign ſo ungrateful a Remembrance as the Deſtruction of the Monarchy, by a deteſtable Aſſembly, compoſed of Members of both Houſes, who being alike Partakers in the Guilt, ought equally to ſhare the Reproach.

* In *Denmark*.

With much more Reaſon might we obſerve, both on Behalf of Your Majeſty and the Commons, that their Lordſhips, not contented with preferring their own Examinations to Yours, not contented with excluding Your Majeſty and the Commons, to whom Parliamentary Enquiries moſt properly belong, appropriate to their Houſe only, even in their Application to their Sovereign, the Name of a Parliament; an Inſtance not to be parallel'd, unleſs by that very Aſſembly that ſubverted the Monarchy.

It is not the Queſtion at preſent, as ſtated by the Lords, Whether their Lordſhips have a Power of taking into Cuſtody, while under Examination, Perſons accuſed of Criminal Matters, cogniſable in Parliament? But that their Lordſhips have a Right to take the Priſoners of the Crown, and the Examination of them ſolely into their own Hands, without Your Majeſty's Conſent, and in ſuch a Manner as muſt neceſſarily prove an Excluſion of Your Majeſty, and this Houſe, is the Propoſition Your Commons deny, and for which their Lordſhips have produced no Precedent.

This unhappy Occaſion has been at the ſame Time accompanied with the moſt ſurpriſing Inſtances of Contradiction, and Counter-Orders to Your Majeſty, both preceding and ſubſequent to it; but eſpecially on the 29th of *January* laſt, when your Majeſty, with your accuſtom'd Goodneſs, communicated to the Lords the Papers relating to the *Scotch* Conſpiracy, with an Exception only of ſome Matters, not yet proper to be made publick, without preventing a further Diſcovery of Secrets of greater Importance, with which Your Majeſty aſſured their Lordſhips they ſhould alſo be acquainted, as ſoon as it could be done without Prejudice. However, their Lordſhips, upon what Provocation, or for what Reaſon, no where appears, immediately addreſs'd to Your Majeſty, preſſing You to lay before them the whole Matter, and all Papers relating thereunto; by which Your Majeſty was put under a Neceſſity, either to give their Lordſhips a Refuſal, or to comply with their unexpected Importunity, to the endangering the publick Service. Theſe Proceedings, ſo extraordinary in their Nature and in their Manner, could not but ſenſibly affect Your faithful Commons, whoſe earneſt Deſire it is, to ſee both Your Houſes of Parliament, and the whole Body of Your People, entirely agreed to pay the Deference due to Your Majeſty's Wiſdom, to confide in Your Care, and to promote and maintain Your Honour and Dignity.

Their Lordſhips, not ſatisfied with aſſuming this unprecedented Power, have endeavour'd, with a great deal of Art, to perſuade Your Majeſty of the Neceſſity of it, to prevent the Deſigns of ill Princes, and their Favourites: But as it may ſeem unreaſonable for their Lordſhips to begin to practiſe upon a good Prince, ſuch Methods as are pretended only to be needful againſt an ill one; ſo it is our humble Opinion, That the Danger might be much greater, admitting this Precedent. Should the Lords combine to defend one another from Enquiries and Proſecutions, all Parliamentary Impeachments might be eluded, ſecret Deſigns carried on, the Innocent aſperſed without Reparation, and the Guilty acquitted without Trial. Nor is that Inſtance, mentioned by the Lords, an unſeaſonable Caution, ſince that Revolution in a neighbouring Kingdom, alluded to by their Lordſhips, was occaſioned by the Incroachments of a prevailing Cabal of Lords, who endeavouring to enſlave the People, and to betray their King and their Country to a Foreign Power, obliged the Church and the Commons to unite in the publick Defence.

Your faithful Commons have found themſelves ſo happy under Your Majeſty's Adminiſtration, that they pleaſe themſelves with more agreeable Proſpects, and renouncing ſuch Examples of unſeaſonable Jealouſies and Fears, moſt thankfully receive the Bleſſings of Your Reign: Nor could they have made a more grateful Return for Your Majeſty's generous Protection of their Liberties, than by a ſuitable Concern for Your Prerogative.

If their Lordſhips had conſulted their own Journals, with the ſame Care that we always take to be rightly informed, they would hardly have affirmed, That a direct Appeal to the Throne, without any previous Deſire of Conference, had been an unprecedented Practice: Their Books are filled with Variety of Inſtances to the contrary; but without examining their Books, it ſeems very ſurpriſing, that their Lordſhips could ſo ſoon forget their Addreſs preſented to Your Majeſty the laſt Seſſion, on Behalf of the Lord Biſhop of *Worceſter*, and their Addreſs to the late King, on Behalf of *William* Earl of *Portland*, *Edward* Earl of *Orford*, *John* Lord *Somers*, and *Charles* Lord *Halifax*, impeached by the Commons of High Crimes and Miſdemeanours: And when this Houſe formerly expoſtulated with the Houſe of Lords, for proceeding in the very ſame Method of which they now complain, their Lordſhips made a moſt ſolemn Declaration, in theſe Words;

That they muſt ever aſſert a Liberty in their Houſe, to apply to the Throne by themſelves, for the doing any Thing warranted by Law, &c.

Nor can the Lords, we preſume, upon ſecond Reflection, deny the Commons the ſame Liberty, which their Lordſhips themſelves have ſo ſtrongly aſſerted, and ſo frequently practiſed.

Your loyal Commons ſincerely concur with their Lordſhips, in declaring, That we will never contribute, by any Act of ours, to the Diminution of the Rights of the Crown, and that we will not ſuffer it in others. Your Majeſty, their Lordſhips, and the whole World, may judge, from the Example we have now given, if their Lordſhips do truly wiſh the Houſe of Commons may, in all Times to come, ſpeak and act with that Regard to the Prerogative, which they allow us the Honour to have now taken up; we ſhall be very unfortunate to continue under their Diſpleaſure, at the ſame Time when they ſeem to hope, that thoſe who ſucceed us will take Pattern by us.

We wiſh their Lordſhips alſo, on their Part, may continue, in all Times to come, to ſpeak with that Regard to Parliamentary Impeachments, which they ſeem ſo lately to have taken up; ſince we have Reaſon to apprehend, that the Miſunderſtandings which have of late Years ariſen between the Two Houſes, have been principally owing to the Artifices of ſome particular Perſons among themſelves, whom the Commons thought it their Duty, for the publick Safety, to bring to Juſtice. How much more difficult will all ſuch Endeavours be render'd, ſhould their Lordſhips be once admitted ſole Examiners of Accuſations againſt each other, as they are already ſole Judges?

We are accuſed, but moſt unjuſtly, of exciting and earneſtly deſiring Your Majeſty to exert Your Prerogative againſt the Houſe of Lords: We appeal to the Words of our Addreſs, if it is poſſible naturally to impoſe any ſuch Senſe upon any Expreſſion that is there. We are ſorry their Lordſhips ſhould deſcend ſo low as to the ſtraining and wreſting of Words, by which they rather diſcover an unfortunate Inclination to make us ſeem culpable upon any Terms, than that they in Truth believe us ſo. We know how vain and how fruitleſs an Application it would be, to excite Your Majeſty to any Abuſe of Your Power, which we are convinced You will always exerciſe for the general Good; and ſo far are Your Commons from entertaining any ſuch Deſire, that we heartily wiſh to ſee a good Correſpondence preſerved been the Two Houſes; nor would forbear to purchaſe it at any Rate, except the giving up the Rights of Your Majeſty, by whom we are protected, and the Liberties and Properties of the People, by whom we are entruſted.

Theſe few Inſtances, ſo plain, and ſo unconteſtable, we preſume, will be ſufficient, without treſpaſſing much longer upon Your Majeſty's Time, to diſcredit whatever elſe has been alledged to create in Your Majeſty, and thoſe we repreſent, an ill Opinion of us. We have been careful and induſtrious to avoid, as far as was conſiſtent with our neceſſary Juſtification, all Occaſion of reviving Animoſities; and how great ſoever the Provocation has been, Your Majeſty having declared how uneaſy You are under ſuch Miſunderſtandings, we ſhall make no Difficulty to lay aſide our Reſentments, who ſhall always be ready to ſacrifice our Lives and Fortunes to Your Quiet and Service: Nor can we doubt but we muſt ſtand fully acquitted to the whole World, and eſpecially to Your Majeſty; ſince the Zeal that we have ſhewn, and the Reproaches that we have borne, have been owing to no other Cauſe but the Defence of an excellent Queen, in whoſe Hands God Almighty has placed the Executive Authority over theſe Nations, which Authority it has been the only Endeavour of Your faithful Commons to preſerve as entire as our Laws and Conſtitution allow.

May it pleaſe Your moſt Sacred Majeſty,

It is with the deepeſt Concern, and a Grief not to be expreſſed, that Your dutiful and loyal Commons have found themſelves engaged in Diſputes of this Nature, by which they have been ſo unſeaſonably interrupted in finiſhing the Supplies, and other Matters of the higheſt Importance. How zealouſly they have applied themſelves to the Diſcharge of their Duty, appears from their having already preſented Your Majeſty with the greateſt part of their Aids, with a Diſpatch and Unanimity beyond Example: Nor could the few Bills yet depending have met the leaſt Obſtruction or Delay, but from the indiſpenſible Neceſſity of vindicating Your Majeſty's Royal Prerogative, the Privileges of our own Houſe, and the Rights and Liberties of all the Commons of *England*, in ſeveral Inſtances invaded almoſt at the ſame Time; we wiſh there may have been more of Miſtake than Deſign in thoſe who have created theſe unhappy Differences: However, we deſire the Remembrance may be henceforth blotted out, and that there may remain no other Impreſſion in the Hearts both of Lords and Commons, than a ſincere and paſſionate Concern for Your Majeſty's Welfare and Glory; nor any other Contention ever hereafter ariſe, but by whom the Publick Good ſhall be beſt advanced, the Proteſtant Succeſſion, and the Church of *England* beſt ſecured, and the juſt Rights and Prerogatives of the Crown beſt ſupported.

Martis, 22 *die Februarii*, 1703.

Mr. Speaker reported, That he, with the Houſe, did Yeſterday preſent their humble Addreſs to Her Majeſty, and that Her Majeſty did thereupon give the gracious Anſwer following.

Gentlemen,

"I Return you many Thanks for the great Concern you expreſs for me and my *juſt Rights*. Your Diſpatch of the Supplies is a great Advantage to the Publick Service; and I am very well pleaſed with the Aſſurances you give me, of your Care to avoid any Occaſion of Difference between the Two Houſes, eſpecially at this Time, when there is ſo apparent a Neceſſity of ſtrengthening ourſelves againſt the malicious Deſigns of our Enemies."

Jovis, 24 *die Februarii*, 1703.

Ordered, That ſome Members be appointed to ſearch the Journals of the Houſe of Lords, what Proceedings have been ſince the laſt Report to this Houſe, upon the Papers communicated to the Lords by Her Majeſty, relating to the Conſpiracy; and ſeveral Members were appointed accordingly.

Lunæ, 28 *die Februarii*, 1703.

Sir *Humphrey Mackworth* reported, That the Members appointed had been to inſpect the Journals of the Houſe of Lords, what Proceedings had been ſince the laſt Report to this Houſe, upon the Papers communicated to the Lords by Her Majeſty, relating to the Conſpiracy; but that they did not find any Proceedings as yet enter'd in their Journals; but that out of the Papers for making up the ſame, they had taken Copies of the Proceedings they found therein, which he read in his Place, and afterwards deliver'd in at the Table, where the ſame were read.

Ordered, That the Conſideration of the ſaid Report be referr'd to the Committee of the whole Houſe, who are to conſider of the Papers communicated by Her Majeſty to this Houſe, relating to the Treaſonable Correſpondence carried on with St. *Germain*'s, and the Court of *France*.

Martis, 29 *die Februarii*, 1703.

Mr. *Freeman* (according to Order) reported from the Committee of the whole Houſe, to whom it was referred to conſider of the Papers com-

communicated by her Majeſty to this Houſe, relating to the treaſonable Correſpondence carried on with St. *Germain*'s, and the Court of *France*, the Reſolution which they had directed him to report to the Houſe, which he read in his Place, and afterwards delivered in at the Table, where the ſame was read, and is as followeth:

Reſolved, That it is the Opinion of this Committee, That the Houſe be moved, that an humble Addreſs be preſented to her Majeſty, That ſhe will be pleaſed to re-aſſume the juſt Exerciſe of her Prerogative, and take to herſelf the Examination of the Matters relating to the Conſpiracy, communicated to this Houſe by her Majeſty; and to give Aſſurance, that they will defend her Majeſty's ſacred Perſon and Government againſt all Perſons concerned in the ſaid Conſpiracy, and all other Conſpirators whatſoever: And to declare, That the eſtabliſhing of a Committee of *Seven Lords*, for the ſole Examination of the ſaid Conſpiracy, is of dangerous Conſequence, and may tend to the Subverſion of the Government.

Reſolved, That the Houſe doth agree with the Committee, That an humble Addreſs be preſented to her Majeſty, That ſhe will be pleaſed to re-aſſume the juſt Exerciſe of her Prerogative, and take to herſelf the Examination of the Matters relating to the Conſpiracy, communicated to this Houſe by her Majeſty; and to give Aſſurance, that they will defend her Majeſty's ſacred Perſon and Government, againſt all Perſons concerned in the ſaid Conſpiracy, and all other Conſpirators whatſoever; and to declare, That the eſtabliſhing of a Committee of *Seven Lords*, for the ſole Examination of the ſaid Conſpiracy, is of dangerous Conſequence, and may tend to the Subverſion of the Government.

Reſolved, That the ſaid Reſolution be preſented to her Majeſty by the whole Houſe.

Ordered, That ſuch Members of this Houſe as are of her Majeſty's moſt honourable Privy-Council, do humbly know her Majeſty's Pleaſure, when ſhe will be attended by this Houſe.

Mercurii, 1 *die Martii*, 1703.

Mr. Secretary *Hedges* reported, That her Majeſty had been pleaſed to appoint to be attended by this Houſe, To-morrow, at four of the Clock in the Afternoon, at St. *James*'s.

Veneris, 3 *die Martii*, 1703.

Mr. Speaker reported, That he, with the Houſe, did Yeſterday preſent their humble Addreſs of the 29th of *February* laſt to her Majeſty, and that thereupon, her Majeſty was pleaſed to give the gracious Anſwer following.

Gentlemen,

"THE great Marks of Truſt and Confidence which you have given "me in this Addreſs, are very acceptable to me.

"I thank you for your Advice, and ſhall conſtantly exerciſe my juſt "Prerogative for the Security and Satisfaction of my Subjects."

Upon theſe Proceedings of the Houſe of Commons, the Houſe of Lords, the 28th of *March*, drew up another Repreſentation, which they preſented to her Majeſty, and is as follows.

The humble Repreſentation, or Addreſs, of the Right Honourable the Lords Spiritual and Temporal, in Parliament aſſembled, preſented to her Majeſty, on Friday the 31ſt *Day of* March, 1704. *and her Majeſty's moſt gracious Anſwer thereunto* *.

Die Martis, 28 *Martii*, 1704.

May it pleaſe your moſt Excellent Majeſty,

WE the Lords Spiritual and Temporal in Parliament aſſembled, found ourſelves obliged (though with great Unwillingneſs) to make an humble Repreſentation to your Majeſty, on the 18th of *January* laſt, of the Injuſtice done to us by the Houſe of Commons; and it is with the utmoſt Reluctance we are brought to give your Majeſty a ſecond Trouble upon the like unhappy Occaſion. This appears by our Silence after the Addreſs of the Houſe of Commons preſented to your Majeſty the 21ſt of *February*: For though that Paper be, in effect, but one continued Miſrepreſentation of our Words and our Proceedings, yet we thought ourſelves ſecure in your Majeſty's great Judgment, which would diſcern where the Truth lay, through all the Colours made Uſe of to diſguiſe it. And we were willing to hope, that a Moderation, whichwas ſo little deſerved, could not but have a good Effect upon the Houſe of Commons; but the Votes of the 29th of *February*, which they laid before your Majeſty, have convinced us of our Miſtake, and made it impoſſible for us to flatter ourſelves longer with any ſuch Expectation: They continue to miſrepreſent our Proceedings, and to ſolicit the Throne againſt us, and thereby put us upon an abſolute Neceſſity of doing ourſelves Juſtice, in laying a true State of Things before your Majeſty. When we obſerve, that the firſt Addreſs of the Houſe of Commons was ordered the next Day after we entered upon the Examination of *Boucher*; That on the 3d of *February*, when we appointed a Day for taking the Papers relating to the Conſpiracy into Conſideration, the Houſe of Commons appointed a Committee to draw up the Addreſs againſt us, preſented to your Majeſty on the 21ſt, which was the Day our Committee reported *Keith*'s Examination; and that their Votes of the 29th came from a Committee appointed to conſider of the Papers communicated to them, the ſame Day we made our Addreſs to your Majeſty to iſſue out a Proclamation for encouraging the Diſcovery of the Cypher of the Gibberiſh Letters (though they had made a Compliment to your Majeſty on their reading thoſe Papers, and had laid aſide all Thoughts of them for three Weeks together). We cannot, without great Concern, reflect upon the Unſeaſonableneſs of theſe Applications: What can be more likely to prevent the Diſcovery of this dangerous Conſpiracy, than a Diſagreement among thoſe who ſhould unite their Endeavours in aſſiſting your Majeſty to ſearch to the Bottom of it? What can more encourage Offenders to an obſtinate Silence, than the Proſpect of having the Examinations interrupted by an unhappy Breach between the two Houſes? And what can give greater Security to your Majeſty's Enemies, than to ſee a Foundation laid for ſuch Diſputes, as will for ever put an End to all Parliamentary Enquiries into their Deſigns? The Gentlemen of the Houſe of Commons have carried this Point ſo far, that rather than ſuffer us to proceed quietly in ſearching into the Bottom of this dangerous Conſpiracy, they do not only reflect on us, but depart from their Pretences of Reſpect to your Majeſty, and cenſure your Conduct in aſſiſting our Examination, as if you had thereby done an Injury to your Prerogative. We are therefore obliged in Duty to your Majeſty, as well as Juſtice to ourſelves, farther to explain the Grounds on which we have acted, and to produce Precedents to ſhew, we have done nothing unwarranted by the Practice of our Anceſtors.

We cannot but obſerve how the Houſe of Commons have varied their Style; in their firſt Addreſs they directly charged the Lords with wreſting Priſoners out of your Majeſty's Hands; in their ſecond Paper, they ſay only, We ſeem to exclude your Majeſty from any Power over the Priſoners; but the Charge is alike unjuſt in both.

They continue to complain of two of our Orders; one of which they ſay was to remove your Majeſty's Priſoners out of your Cuſtody into our own; and the other, to commit their Examination ſolely to a Committee of ſeven Lords, choſen and appointed by ourſelves.

We know not by whom a Committee of Lords can be choſen but by the Houſe of Lords; nor can there be any thing more Parliamentary, and more proper for the Diſpatch and Secrecy of an Examination, than referring it to a Committee.

This was practiſed by both Houſes of Parliament, in the Year 1678 and 1679; nor was it objected to either, that they took the Examination ſolely to themſelves: Though the Committee of the Houſe of Commons was, in the Style of their own Book, *a Committee of Secrecy*.

The Lords, the Commons, and the Privy Council had that Plot under Examination at the ſame Time, yet there was no interfering of Juriſdictions; the Papers and the Witneſſes were conveyed to one another, as there was Occaſion, without any Diſputes; none of them ſtopped or delayed the Enquiries of the others, but concurred in promoting them.

We might have expected, that when the Houſe of Commons charged us a ſecond Time with violating your Royal Prerogative, and the known Laws of the Land, they would have ſpecified what Branch of the Prerogative we had infringed, or what Law, Statute, or Uſage, we had broken: Whenever they think fit to be more particular in the Charge, we ſhall be very ready with our Anſwers.

We ſhall always contend with the Houſe of Commons in Zeal for your Majeſty's Honour and Safety; but we ſhall never pretend to be meritorious, in giving up what we know to be the Right of Parliaments: And we are ſure your Majeſty underſtands and loves the Conſtitution of the *Engliſh* Government too well, to approve of ſuch a Preſent; and therefore we muſt again beg Leave to inſiſt on our former Repreſentation, as well founded in every Particular.

We have no Cauſe to be ſorry to hear it has been ſo univerſally well received, ſince we are ſure it cannot but be for your Majeſty's Service, as well as a full Juſtification of ourſelves. We were very careful that there ſhould be no Harſhneſs in any Expreſſions of our Repreſentation; but if they complain of Reaſoning they cannot anſwer, or are uneaſy to hear Truths they cannot deny, it is not our Fault.

The Houſe of Commons were certainly in the right, in not producing the Precedents which they ſay they have of ill Language that has paſſed between the two Houſes, becauſe it could not have been agreeable to your Majeſty.

We muſt own we never ſearched our Books for that Purpoſe; and we believe, that if ever the Commons uſed the like before, our Anceſtors thought it unbecoming them to return it; and we think it moſt proper to be forgotten.

We cannot think that any Expreſſions (by whatſoever Zeal inſpired), that are not ſuitable to the Decency which is due from one Houſe of Parliament to another, can ſhew a Reſpect to your Majeſty, or add any Force to their Arguments.

We do not comprehend what is meant by their ſaying, We did appropriate to the Houſe of Lords only the Name of a Parliament. There is no Foundation for that Charge in any Word of our Repreſentation; nor was there any Occaſion for ſuch an Aſſertion in the Controverſy between us; both Houſes are alike intereſted in the Point we maintain. We are ſure the Houſe of Commons have claimed and exerciſed ſuch a Power of Examination and Commitment as the Lords inſiſt upon; and we are well aſſured, that on proper Occaſions every future Houſe of Commons will do the like again: So that let the Gentlemen of the preſent Houſe of Commons be as liberal as they pleaſe in renouncing their own Right, and as much diſpleaſed as they think fit with the Houſe of Lords for not following their Example, we have this Comfort, that your Majeſty is too equitable to think amiſs of us for defending our Parliamentary Rights, and we are ſure of having every Houſe of Commons that ſhall ſit hereafter of our Side, as well as every *Engliſhman*, who values the Conſtitution of his Country.

There is no Paſſage in our Hiſtory more notorious, than that the pretended Houſe of Commons, in the Year 1648, when they could not prevail with the Houſe of Lords, then ſitting, to join with them in the intended Murder of their King, took upon them firſt to aboliſh the Houſe of Lords by a Vote, and then to proceed to do that execrable Fact by themſelves.

It is not therefore to be imagined what the Houſe of Commons can mean, by ſaying, That Aſſembly was compoſed of Members of both Houſes. If all other Proof of the contrary was wanting, yet the Teſtimony of that bleſſed, though unfortunate King, is abundantly ſufficient, who made it one of his Exceptions to that deteſtable Court at his Trial.

* *Die Veneris* 31 *Martii*, 1704. It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, that the Repreſentation, or Addreſs, of this Houſe, agreed to the 28th Inſtant, and preſented to Her Majeſty this Day, and Her Mejeſty's moſt gracious Anſwer thereunto, ſhall be forthwith printed and publiſhed.

Matth. Johnſon, Cler' Parliamentor'

We

We can never call to Mind that Fact without Horror, and yet we are obliged by Law to commemorate it every Year; and ſurely it can never be mentioned more uſefully than upon ſuch an Occaſion, when the ſtrange Uſage of one Houſe of Parliament by another, makes it impoſſible not to reflect on the miſerable conſequences that have formerly followed from ſuch Differences.

When the Gentlemen of the Houſe of Commons act according to the Meaſures taken in thoſe Times, they ought not to be offended if they are remembered by the Lords. If they will take upon themſelves to ſtop the iſſuing out Your Majeſty's Writs for filling up their Houſe, and that in ſeveral Places, and for a long Time, whereby they make themſelves an imperfect Repreſentation, which is a Wound to the Conſtitution, a Wrong to the Boroughs, who have a legal Right to ſend Repreſentatives and an Injuſtice to Your Majeſty, who has an undoubted Title to the Service and Attendance of all the Members; can they wonder, or ought they to complain, if we preſume to tell Your Majeſty, That very few Things were leſs excuſable in that unhappy Houſe of Commons, than their refuſing to fill up their Body, and compleat the Repreſentation?

Theſe Beginnings are very dangerous: It is not eaſy to foreſee how far ſuch a Practice may be carried, or what Effects it may have upon the Boroughs that ſuffer the preſent Wrong, or upon others who may apprehend the like Uſage; and who can ſay, but, in After-Times, an ill Prince may take Advantage of ſuch Precedents, and think himſelf juſtified in with-holding his Writs from ſome, by as good Law as the Commons can ſhew for pretending to ſtop them from iſſuing to others?

The Commons have made three Addreſſes to Your Majeſty upon this Occaſion, yet have not ſtated the Matter in Diſpute fairly in any one of them. The plain Matter of Fact is this; *Boucher*, *Ogilby*, &c. being ſeized by the Cuſtom-Houſe Officers on the Coaſt of *Suſſex*, as they landed from *France*, were ſent for to be brought to Town by Meſſengers; the Lords having reſolved to examine theſe Perſons themſelves, Ordered the Meſſengers to bring them to the Houſe, and committed them to the Black Rod, in order to their Examination. The Queſtion is, Whether this Proceeding of the Houſe of Lords was a Breach of any Law, or contrary to the Cuſtom of Parliaments? We aſſerted it was not, and as we humbly apprehend, we proved our Aſſertion by undeniable Reaſons, and we aſſured Your Majeſty we could juſtify it by Precedents.

It appears by our Records, That we have at all Times, when we thought it expedient for the publick Good, not only taken Priſoners out of the Cuſtody of the Meſſengers (which is but a Temporary Confinement, in order to the examining Perſons, or while they are under Examination), but taken them out of any other Cuſtody, and put them ſometimes into the Cuſtody of Your Majeſty's Officers attending the Houſe of Peers, ſometimes removed them from one Priſon to another, as the Houſe thought moſt ſafe and proper, for their Examination.

Perſons condemn'd, and under Sentence of Death, may be moſt properly called the Priſoners of the Crown, when their Lives and Eſtates, as well as Liberties, are entirely at Mercy; yet the Houſe of Lords has ſent for ſeveral in thoſe Circumſtances from the furtheſt Parts of *England* to be examined.

We could produce Precedents in all Times, when any thing of this Nature has been before the Houſe, the moſt ancient Records furniſhing the cleareſt and moſt frequent Inſtances of the Juriſdiction of the Lords, in examining, trying, and puniſhing all great Offenders.

But we ſhall at preſent confine ourſelves to the Proceedings in reſpect to the Popiſh Plot, in the Reign of Your Majeſty's Royal Uncle, (except in ſome few Inſtances in both Houſes, as well before as after that Time) not only becauſe that was the laſt Conſpiracy that fell under a Parliamentary Examination; but becauſe both Houſes of Parliament enter'd into the Enquiry with equal Zeal.

And we beg Leave to annex to this our humble Addreſs, ſome Extracts of the Proceedings of both Houſes in that Enquiry, N° I. II.

We deſire to obſerve, That though the King mention'd that Plot in his Speech at the Opening of the Seſſion; yet he was ſo far from communicating the Particulars to the Parliament, or deſiring them to look into it, that he directly told them, he would leave that Matter to the Law.

He was not very deſirous of having the Parliament meddle with that Enquiry, and therefore 'tis reaſonable to ſuppoſe, he would not have been ſilent, if their Proceedings had been a Violation of the Prerogative, and the known Laws of the Land.

We beg Leave to make this ſingle Remark on ſuch of the Precedents as relate to the Removal of the Popiſh Prieſts after Sentence of Condemnation, That this was taken notice of by the Commons, and ſeveral Meſſages paſſed between the Two Houſes about them: The Commons were earneſt that they ſhould be executed, and inſiſted to have them ſent back to the ſeveral Priſons for that Purpoſe; but they never pretended to deny that the Lords had Power to ſend for them, or change the Cuſtody.

The Commons, in their ſecond Addreſs, pretend to have been ſenſibly affected and provoked to their harſh Treatment of the Lords, by what paſs'd in the Lords Houſe the 29th of *January*, which was almoſt ſix Weeks after their firſt Addreſs was preſented.

It looks as if they wanted Reaſons to juſtify the ordering that Addreſs, when they are forced to defend it by Arguments drawn from Facts which happen'd ſo long after.

If the Commons had conſidered our Addreſſes of the 29th of *January*, or the 15th of *February*, they would have found in them no Contradictions, or Counter-Orders to Your Majeſty, with which they charge us. We were inform'd of ſeveral Papers that had not been communicated to us; thoſe we deſired, and we received them by Your Majeſty's Command; and have, we hope, made uſe of them for Your Majeſty's Service, and the publick Safety. We have had the Happineſs that our Zeal has been more than once approved by your Majeſty: And we leave the Commons to juſtify their own Coldneſs and Indifference, in a Point of ſuch high Concern.

If we look back on the Steps the Commons have made in this whole Matter, they are ſuch as will hardly be believed hereafter: And we can deſire nothing more for our Juſtification, than that our Proceedings and theirs may be compar'd.

When the Papers relating to this Conſpiracy were laid before them, they contented themſelves with reading them, and without offering any Advice or Aſſiſtance, gave Your Majeſty Thanks for laying the Papers before them, and expreſſed their Satisfaction in Your Majeſty's wiſe Conduct, and great Care of Your People. This was certainly juſtly due to Your Majeſty's prudent Adminiſtration, but was not all that might have been reaſonably expected from a Houſe of Commons, when Your Majeſty had laid before them the Account of ſuch a dangerous Conſpiracy.

Thus the Matter reſted for ſeveral Weeks: And when at laſt the Houſe of Commons thought fit to take up a ſecond Time the Conſideration of thoſe Papers, inſtead of doing what we hoped, and the Kingdom expected from them, all they did was to find new Cauſe of Diſpleaſure againſt the Lords, to complain of what Your Majeſty had done, to ſolicit You to re-aſſume the juſt Exerciſe of your Prerogative, and to deſire You to ſtop our Proceeding, as of dangerous Conſequence, and what might tend to the Subverſion of the Government.

This Conduct ſeems very unaccountable: And when they had not thought fit to paſs any Judgment on the Conſpiracy, 'tis hard that the Enquiry into it ſhould be ſo ſeverely cenſured.

The Commons confine what we ſpoke in General Terms of the fatal Conſequences that have happen'd in moſt Countries in *Europe*, from the unhappy Differences which have ariſen between the Eſtates of the ſeveral Kingdoms, to the Inſtance of one Country: The Obſervation was general, and the Overthrow of the Liberties of moſt of our Neighbours ſprung from this Root.

But we are ſurprized, that the Houſe of Commons ſhould ſingle out that Inſtance of a Revolution in a neighbouring Country, where the Clergy and the Commons were prevail'd upon by the Management of the Court, to carry their Reſentments againſt the Lords ſo far, that they deliver'd up the Authority of the Lords, the Freedom of the People, and made a total Alteration of the Government.

We cannot imagine what is meant by calling this Treachery of the Commons and Clergy, in betraying the Liberties of their Country, their uniting in the Publick Defence; nor can we conceive how this comes to be mentioned on this Occaſion: We hope there is no Danger of ſuch a Union amongſt us for ſuch Purpoſes; and we think Your Majeſty, and Your People, are equally concern'd in this Inſinuation.

'Tis wonderful that the Commons ſhould magnify their own Care in examining our Journals, reflect on us for not looking into our own Books, and at the ſame Time cite two Precedents, in which they are entirely miſtaken, and which prove the direct contrary to what is inferr'd from them.

The Lords in their Repreſentation affirm, That the Commons, by appealing directly to the Throne againſt the Houſe of Lords, and charging them with Attempts of the higheſt Nature, without firſt aſking a Conference, had done a Thing unprecedented. The Commons, to prove the contrary, cite the Addreſs preſented to Your Majeſty on Behalf of the Biſhop of *Worceſter*, and the Addreſs of the Lords to the late King, on Behalf of Four Lords named in their Addreſs. We crave Leave to ſtate theſe two Caſes: The Commons had cenſured the Biſhop of *Worceſter*, without giving him any Opportunity of being heard. They had voted him Unchriſtian, which ſurely is aſperſing the Innocent without Poſſibility of Reparation, as well as it was condemning him without a Trial; and made an Addreſs to Your Majeſty to remove him from being Almoner. This Proceeding ſeem'd very extraordinary with reſpect to Your Majeſty, and very unparliamentary with reſpect to the Houſe of Lords, of which the Biſhop was a Member; and yet no Notice was taken of them: Upon this, the Lords made an Application to Your Majeſty, on Behalf of the Reverend Prelate, That he might not ſuffer in Your Majeſty's Opinion, before he had an Opportunity of making his Defence.

The Caſe of the Four Lords was this: The Commons having at the Bar of the Houſe of Lords impeach'd them for High Crimes and Miſdemeanours, the next Day made an Addreſs to the late King, to remove them from his Preſence and Councils for ever: The Houſe of Lords thought this an Attempt of the higheſt Nature upon their Judicature, that while the Cauſes were depending before them in Parliament, the Commons ſhould quit the Part they had taken of Accuſers, and pretend to be the Judges themſelves, and ſolicit the King to put their Sentence in Execution immediately. But yet they proceeded to act with ſuch a Moderation as was ſcarce to be juſtified: they forbore expoſtulating with the Commons, much leſs did they appeal to the Throne againſt them, they only deſired the King not to paſs any Cenſure upon them before they were tried: They took no Notice that the Commons had made any Addreſs, and only endeavoured to prevent the Injuſtice and Oppreſſion which might have been done to their own Members, and the Affront offered to their Judicature, without making the leaſt Reflection on this Proceeding; and they had no other way of acting, for no Conference could have prevented the Impreſſion that might have been made on the King by ſuch an Application of the Commons.

Beſides, in both theſe Caſes the Commons were the Aggreſſors; they firſt applied to the Throne, and made it neceſſary for the Lords to follow them. Thus far theſe Inſtances may be of Uſe to ſhew by what Steps the Commons roſe to this way of addreſſing againſt the Houſe of Lords; they began theſe Attempts in the Caſe of particular Lords, which now they put in Practice againſt the whole Body of the Peers.

The Lords will think themſelves concern'd in all Times to obſerve and maintain the Law and Uſage of Parliaments in Impeachments; and this they did with all poſſible Exactneſs, upon the Occaſion of the Impeachments of thoſe Four Lords; but they could not judge it reaſonable to let the Accuſers ſhare with them in their Judicature. And if the Commons in Times to come ſhall ſo far forget themſelves, as to endeavour to blaſt Men's Reputations, by exhibiting Articles, when they are not able or prepared to maintain their Charge, the Lords will always look upon themſelves as bound to do equal Juſtice, and diſcharge the Innocent. Nothing can truly leſſen or weaken the Force and Awe of

Impeachments

Impeachments, but a partial Uſe of them: While they continue to be the equal Inſtruments of Publick Juſtice, they will have their Weight in all Places; but if once they are made uſe of to defame Men only, without Thoughts of bringing them to Trial, Impeachments will loſe their Terror, and the Houſe of Commons will not encreaſe their Honour or Authority: And if in that Caſe the Houſe of Lords could not do Juſtice to the Accuſed, they would be the only Judicature which had the unhappy Power of condemning, but not of acquitting.

The Lords are far from pretending to be the ſole Examiners of Conſpiracies hereafter, if the Commons will do their Duty in concerning themſelves for the Publick Safety; but if they will ſhew ſo little Zeal as the Gentlemen of this Houſe of Commons have done, if when they are told of Conſpiracies from the Throne, they will concern themſelves ſo little as to leave the Enquiry to others, the Lords muſt of Conſequence be the ſole Enquirers, or elſe Parliaments muſt be totally excluded from ſuch Examinations.

The Commons in their ſecond Addreſs complain, That they are accuſed moſt unjuſtly of exciting, and earneſtly deſiring Your Majeſty to exert Your Prerogative againſt the Houſe of Lords. The Words of their firſt Addreſs are ſo plain, that no other Conſtruction could be reaſonably put upon them; and we are now very ſure we did not miſtake their Meaning, ſince in the Votes which they have laid before Your Majeſty, they have thought fit to explain themſelves, and in direct Terms deſire Your Majeſty to re-aſſume the juſt Exerciſe of Your Prerogative, and take to Yourſelf the Examination of the Matters relating to the Conſpiracy.

There needs no wreſting or ſtraining theſe Words to juſtify the Interpretation we made of their firſt Addreſs; and ſurely they had forgot what they ſaid in the ſecond, when they came to paſs thoſe Votes, by which the Sincerity of their Profeſſions, when they pretend to deſire that the Remembrance of thoſe unhappy Differences may be blotted out, does beſt appear. But we are ſtill at a Loſs to know what they truly mean by Your Majeſty's re-aſſuming Your juſt Prerogative.

Your Majeſty was pleaſed to lay the Papers relating to the Conſpiracy before us, and You had given Your Royal Approbation to the Method in which we had put the Examination: And it ſeems a ſtrange Averſeneſs to Parliamentary Inquiries, that they would not leave it poſſible, even with the Concurrence of the Crown, for either Houſe of Parliament to enquire into Conſpiracies; though at the ſame Time we muſt freely own, that if this Power be not lodged in us by the Conſtitution, it ought not, nor indeed cannot be given and delegated by the Crown.

Moſt Gracious Sovereign,

We humbly aſk Pardon for having detained you ſo long upon a Subject, which cannot but be diſagreeable to Your Majeſty.

We beg Leave to conclude, with expreſſing the juſt Senſe we have of that virtuous and truly Royal Moderation, which Your Majeſty has ſhewn upon this Occaſion, in not ſuffering Yourſelf to be prevail'd upon to do any Thing to the Prejudice of the Conſtitution, from whatſoever Hands the Invitation comes. It ſhall be our daily Prayer to Almighty God, That he will long preſerve and proſper Your Majeſty for the Good of this Kingdom; and that Your Reign may be as glorious all the World over, as it is happy to all Your People.

Her Majeſty's moſt gracious Anſwer to the Repreſentation, or Addreſs.

My Lords,

"I Hope none of my Subjects have any Deſire to leſſen my Prerogative, "ſince I have no Thought of making Uſe of it, but for their Protec- "tion and Advantage.

"I look upon it as a great Misfortune, when any Miſunderſtandings "happen between the Two Houſes of Parliament, which cannot be with- "out ſo much Prejudice to the Publick, that I ſhall never omit any thing "in my Power to prevent the Occaſions of them."

PRECEDENTS *out of the Journals of the Houſe of* LORDS.

N° I.

2 *Die Maii*, 1675.

A Paper was preſented to the Houſe, being Examinations taken by ſome Juſtices of the Peace in the County of *Surrey*, concerning ſome blaſphemous Speeches ſpoken by *John Taylor*, now a Priſoner at the Gaol at *Guilford*, which Paper being read, the Houſe Ordered as follows, *viz.*

Ordered, The Serjeant at Arms bring in ſafe Cuſtody to the Bar of this Houſe, on *Friday* next, at Ten of the Clock in the Forenoon, the Body of the ſaid *John Taylor*.

Die Lunæ, 21 *Octobris*, 1678.

His Majeſty acquaints the Lords and Commons with a Plot againſt His Perſon in a Speech, Part of which Speech, ſo far as relates to the Plot, follows, *in hæc verba:*

"I Now intend to acquaint you, (as I ſhall always do with any thing "that concerns me) That I have been informed of a Deſign againſt my "Perſon by the Jeſuits; of which I ſhall forbear my Opinion, leſt I may "ſeem to ſay too much, or too little, but I will leave the Matter to the "Law; and in the mean Time, will take as much Care as I can, to pre- "vent all manner of Practices by that ſort of Men, and of others too, "who have been tampering in a high Degree by Foreigners, and con- "triving how to introduce Popery among us."

Whereupon, the Houſe made the following Addreſs:

"WE Your Majeſty's moſt dutiful and loyal Subjects, the Lords Spi- "ritual and Temporal in Parliament aſſembled, having been ac- "quainted by Your Majeſty, That there is Information given of a hor- "rible Deſign againſt your Majeſty's ſacred Life, (which God long pre- "ſerve) are humble Suitors to Your Majeſty, that You would vouchſafe "to communicate to us (as far as Your Majeſty ſhall think fit) ſuch "Papers as have any Tendency to the Diſcovery thereof, or of any other "Deſign againſt the Proteſtant Religion, as it is now eſtabliſhed in the "Church of *England*, that we may uſe our utmoſt Endeavours to ſerve "Your Majeſty, according to our bounden Duty and Allegiance."

23 *Octobris*, 1678.

The Papers concerning the Plot were delivered to the Deputy-Clerk of the Parliaments, by one of the Clerks of the Council.

Lords Committees were appointed to conſider of the Papers tranſmitted from the Council by His Majeſty's Directions, concerning the Diſcovery of the horrid Deſign againſt His Majeſty's ſacred Perſon, or of any other Deſign againſt His Majeſty, or His Kingdom, by introducing Popery, whoſe Lordſhips have Power to ſend for Perſons, Papers, and Records, as they ſhall ſee Cauſe.

30 *Octobris*, 1678.

Ordered, That *Nathaniel Thompſon*, who is now in the Cuſtody of *William Sorocold*, for printing Popiſh Books for *James Thompſon*, ſhall ſtand committed to the Priſon of the *Gatehouſe* at *Weſtminſter*, during the Pleaſure of this Houſe.

31 *Octobris*, 1678.

Ordered, That the Lords with White Staves do attend His Majeſty, humbly to deſire Him from this Houſe, that the Papers of Mr. *Whitebread* and Mr. *Micho*, which have been read at the Council-Table, may be, by His Majeſty's Command, brought before the Committee to examine Papers relating to the horrid Deſign againſt His Majeſty; and alſo that the Clerks of the Council may bring the Minutes taken by them upon the Examination of *Titus Oates*, and others, before the Council, concerning this Matter.

4 *Novembris*, 1678.

Ordered, That the Lords Committees appointed to examine the Lords who are Priſoners in the *Tower* of *London*, for Treaſon, ſhall alſo examine ſuch other Perſons who are now Priſoners in the *Tower* for Treaſon, as their Lordſhips ſhall think fit, and alſo Sir *Ellis Leighton*, now Priſoner in *Newgate*; and that the Lord Chief-Juſtice of *England* do aſſiſt their Lordſhips at ſuch Times as they ſhall appoint; and that one of the Clerks of the Privy-Council do attend their Lordſhips.

8 *Novembris*, 1678.

Ordered, That the Lords with White Staves do attend His Majeſty, humbly to deſire Him from this Houſe, *That the Letter of Mr.* Coleman, *of the* 29*th of* September, 1675, *to Father* le Cheſe, *and another of his to Father* le Cheſe, *wherein he owns the ſending the ſaid Letter, and Monſieur* le Cheſe's *Letter, whereby he owns the Receipt thereof, which have not been read in this Houſe, may, by His Majeſty's Order, be brought hither.*

The Lord Treaſurer reported His Majeſty's Anſwer,

That His Majeſty will give Order, that the ſaid Letters ſhall be brought to this Houſe as ſoon as may be.

18 *Novembris*, 1678.

Ordered, That *Edward Coleman*, now a Priſoner in *Newgate* for Treaſon, be brought by the Keeper of *Newgate*, before the Lords Committees to peruſe Letters and Papers, To-morrow at Nine of the Clock in the Forenoon; and that the Duke of *Monmouth* be deſired to ſend a ſufficient Guard of Soldiers, to aſſiſt the Keeper of *Newgate*, in this Service of bringing and returning *Edward Coleman*.

Ordered, That the Lords with White Staves do humbly deſire His Majeſty, That His Majeſty will pleaſe to give Order, that the Papers of Mr. *Goodwin*, now in the Hands of the Clerks of the Council, may be brought before the Lords Committees appointed to conſider of, and prepare the Evidences for the Trial of Mr. *Coleman*.

23 *Novembris*, 1678.

Ordered, That the Serjeant at Arms attending this Houſe, his Deputy or Deputies, do forthwith repair to *Stratford* upon *Avon*, in *Warwickſhire*, and bring thence the Body of Mr. *John Gerard*, ſuppoſed to be a Prieſt, and one other Perſon mentioned, but not named, (in a Letter dated there the 20th of *November*) and ſubſcribed *Simon Cale*, Mayor; *John Wolmer*, in which it is recited, That they were in Cuſtody there, for refuſing the Oath of Allegiance, and bring them in ſafe Cuſtody to the Bar of this Houſe.

27 *Novembris*, 1678.

Ordered, That Dr. *Lower*, and Dr. *Warner* be, and are hereby appointed to viſit Mr. *White*, alias *Whitebread*, being ſick near *Weld-houſe*, and give this Houſe an Account To-morrow Morning, in what Condition of Health they find him.

28 *Novembris*, 1678.

Ordered, That the Clerk of His Majeſty's Privy-Council, in whoſe Cuſtody the Depoſitions lately taken at the Council-Board are, which concern the Queen's Majeſty, be, and is hereby appointed to bring the ſaid Depoſitions before this Houſe To-morrow at Nine of the Clock in the Forenoon.

29 *Novembris*, 1678.

The Houſe received an Account, That Dr. *Lower* and Dr. *Warner* have viſited *Whitebread*, and they find that his former Diſtempers have left him, and he hath now only a *Tertian Ague*; and their Opinion is, That he may be removed ſafely upon his Intermitting Days: It is Ordered, That the Serjeant at Arms attending this Houſe ſhall To-morrow attach the Body of Mr. *White*, alias *Whitebread*, and carry him forthwith to the Priſon of *Newgate*, there to remain in ſafe Cuſtody, 'till he ſhall be delivered by due Courſe of Law.

Upon Information given to this Houſe, that one *Daniel Maccarty*, a Romiſh Prieſt, is now under Cuſtody in *Thetford*, in the County of *Norfolk:* It is Ordered, That the Serjeant at Arms attending this Houſe, his Deputy or Deputies, ſhall forthwith repair to *Thetford* aforeſaid, and bring thence the Body of the ſaid *Daniel Maccarty*, in ſafe Cuſtody to the Bar of this Houſe.

20 *Decembris*, 1678.

Whereas *Daniel Maccarty*, a Romiſh Prieſt, was, by Order of the 29th of *November* laſt, brought from the Gaol at *Thetford*, in the County of *Norfolk*, by the Serjeant at Arms attending this Houſe, and is now in his Cuſtody here: It is this Day Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Lords Committees for examining Perſons and Papers, for Diſcovery of the horrid Deſign againſt His Majeſty's Perſon and Government, ſhall examine the ſaid *Daniel Maccarty*; and if their Lordſhips find that he is not charged with any Particulars relating to the ſaid Deſign, he is to be remitted and left to the Law; but if otherwiſe, their Lordſhips are to report to the Houſe what they find concerning him.

3 *Decembris*, 1678.

Upon Information given to this Houſe, by the Lord *Windſor*, That one *Edward Whitaker* ſtands committed in the City of *Worceſter*, for ſome unbecoming Words by him uttered, as is certified in a Letter to his Lordſhip, ſigned *Jo. Tyas*, Mayor: It is Ordered, That the ſaid Mr. *Whitaker* ſhall give Bail before the Mayor of *Worceſter*, for his Appearance before the Lords in Parliament, within eight Days next after ſuch Bail given.

Die Veneris, 13 *Die Decembris*, 1678.

Edward Whitaker being call'd for to anſwer the Charge againſt him ſent up from the Mayor of *Worceſter*, but being not to be found: It is Ordered, That if the ſaid *Edward Whitaker* come not, and render himſelf before the Houſe riſes, he ſhall be attached; and he not coming, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Serjeant at Arms attending this Houſe, or his Deputy, do forthwith attach the Body of *Edward Whitaker* of *London*, Gentleman, and bring him in ſafe Cuſtody to the Bar of this Houſe To-morrow Morning, to anſwer to the Informations put into this Houſe upon Oath againſt him: And this ſhall be a ſufficient Warrant on that Behalf.

Die Sabbati, 14 *Die Decembris*, 1768.

Whereas *Edward Whitaker* was this Day brought to the Bar by the Serjeant at Arms attending this Houſe, to anſwer to the Informations againſt him, which he denies, alledging, That he hath Witneſſes to clear himſelf from the Matters charged on him: Upon Conſideration had thereof, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid *Edward Whitaker* may, and ſhall have Order for ſummoning his ſaid Witneſſes, to be heard *viva voce*, on the Second Day of the Sitting of the Parliament, next after *Chriſtmas*, if he deſires it: At which Time alſo, the Witneſſes, who have inform'd againſt him, ſhall be ſummoned to be heard *viva voce*; and that, in the mean Time, the ſaid Serjeant at Arms ſhall deliver the ſaid *Edward Whitaker* into the Priſon of *Newgate*, there to remain in ſafe Cuſtody 'till further Order: And this ſhall be a ſufficient Warrant on that Behalf.

3 *Decembris*, 1678.

Upon Information given to this Houſe, That one —— *Barneſly*, a Romiſh Prieſt, is now under Cuſtody in the City of *Worceſter*; It is Ordered, That the Serjeant at Arms attending this Houſe, his Deputy and Deputies, ſhall forthwith repair to the City of *Worceſter*, and bring thence the Body of the ſaid —— *Barneſly* in ſafe Cuſtody to the Bar of this Houſe.

Die Sabbati, 14 *Die Decembris*, 1678.

Whereas *Henry Barneſly*, who was by Order of this Houſe ſent for from the Gaol in *Worceſter*, was this Day brought to the Bar by the Serjeant at Arms attending this Houſe, and there examined, being ſuppoſed to be a Popiſh Prieſt: It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid *Henry Barneſly* ſhall, by the ſaid Serjeant at Arms, or his Deputy or Deputies, be returned into the Gaol in *Worceſter*, there to remain in ſafe Cuſtody 'till he ſhall be thence delivered by due Courſe of Law: And this ſhall be a ſufficient Warrant on that Behalf.

Die Lunæ, 23 *Die Decembris*, 1678.

Upon reading the Petition of *Henry Barneſly*, now in the Cuſtody of the Serjeant at Arms attending this Houſe, ſhewing, That being by Order of this Houſe brought from *Worceſter*, and by like Order to be returned thither again; and that being very old and ſickly, he is not able to bear the Journey in this hard Seaſon of the Year; and therefore praying, that he may remain here upon Bail: It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid *Henry Barneſly* (being charged to be a Popiſh Prieſt) ſhall, by the ſaid Serjeant at Arms, be delivered into the Priſon of the *King's-Bench*, there to remain in ſafe Cuſtody, 'till he be better able to be returned to *Worceſter*, in order to his Trial there: And this ſhall be a ſufficient Warrant on that Behalf.

6 *Decembris*, 1678.

Upon Report made by the Earl of *Clarendon*, from the Lords Committees to examine Perſons and Papers, &c. That their Lordſhips think it neceſſary that Sir *Henry Titchborne*, a Popiſh Recuſant, now Priſoner in the Gaol at *Wincheſter*, be brought up to Town: It is Ordered, That the Serjeant at Arms attending this Houſe, his Deputy and Deputies, ſhall forthwith repair to *Wincheſter*, and bring thence the ſaid Sir *Henry Titchborne*, and deliver him into His Majeſty's *Tower* of *London*, there to remain in ſafe Cuſtody till further Order: And this ſhall be a ſufficient Warrant in that Behalf.

To Sir George Charnock, *Knight, Serjeant at Arms attending this Houſe, and to the Keeper of the Gaol at* Wincheſter, *and to the Conſtable of His Majeſty's* Tower *of* London, *and their reſpective Deputies; as alſo to all His Majeſty's Officers, Civil and Military, to be aiding and aſſiſting in this Service.*

20 *Decembris*, 1678.

Upon Information given to this Houſe upon Oath, That *Tho. Thorn*, now or late Servant to *Richard Tasbrough*, Eſq. hath utter'd dangerous and treaſonable Words, and that he is at preſent in the Gaol at *Bury* in *Suffolk*: It is Ordered, That the Serjeant at Arms attending this Houſe, or his Deputy or Deputies, ſhall forthwith repair to *Bury*, and bring thence the Body of the ſaid *Thomas Thorn*, in ſafe Cuſtody to the Bar of this Houſe, to anſwer thereunto.

21 *Decembris*, 1678.

Whereas *Richard Taſbrough*, Eſq. was this Day brought to the Bar by the Serjeant at Arms, and denied all that was alledged againſt him; and whereas there is a Warrant of the Lord Chief Juſtice of *England* iſſued againſt him: It is Ordered, That the Serjeant at Arms deliver the ſaid *Richard Taſbrough* in ſafe Cuſtody to ſuch Perſon or Perſons as the Lord Chief Juſtice of *England* ſhall direct.

29 *Martii*, 1679.

Upon Information given to this Houſe, That *Richard Taſbrough*, Eſq. who is charged to be guilty of the late horrid Conſpiracy, for which he was committed to the Priſon of the *King's-Bench*, hath ſince been enlarged upon Bail, and is now to be brought to his Trial at the Aſſizes at *Bury*, in the County of *Suffolk*: Upon Conſideration had of the Caſe of the ſaid *Richard Taſbrough*, It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Judge of Aſſize for that County be, and is hereby directed, that his Lordſhip proceed no further upon the Trial of the ſaid *Richard Taſbrough*, than to the Indictment of him, and the finding thereof by the Grand Jury; and that the ſaid *Richard Taſbrough* may be ſafely ſent up to *London*, in order to his Trial to be had at the Bar of the Court of *King's-Bench*. And it is further Ordered, That Mr. *Thomas Beake*, one of the Meſſengers attending His Majeſty's Council-Board, be, and is hereby authorized and required with all Speed to attend the ſaid Judge of Aſſize for this Purpoſe, and to take Care of the Execution of this Order, as to the bringing up the ſaid *Richard Taſbrough* in ſafe Cuſtody, in order to his intended Trial: And for ſo doing this ſhall be a ſufficient Warrant.

26 *Decembris*, 1678.

Ordered, That it be referred to the Lords Committees for examining Perſons and Papers, to examine *Richard Taſbrough* and *Thomas Thorn*.

Upon Information to the Houſe by the Lord Viſcount *Newport*, That one *Valentine Harcourt*, a Popiſh Prieſt, is taken, and now in Cuſtody in the Gaol at *Shrewſbury*: It is Ordered, That the Sheriff for the County of *Salop* be, and is hereby required, to take and give Order for the ſending of the ſaid *Valentine Harcourt* in ſafe Cuſtody, to appear at the Bar of this Houſe, and that the Charge of the ſaid Sheriff ſhall be allowed upon his Account in the Court of *Exchequer*; and it is Ordered, That the Sheriffs of the reſpective Counties, through which the ſaid *Valentine Harcourt* ſhall paſs in his being ſent up, as aforeſaid, be aiding and aſſiſting to the Furtherance thereof, as Occaſion ſhall require.

Die Veneris, 21 *Die Martii*, 1678-9.

Upon Report made from the Lords Committees, for examining Matters relating to the Diſcovery of the late horrid Conſpiracy, That Captain *Francis Spalding*, Deputy-Governor of *Chepſtow* Caſtle, who was by Order of this Houſe, dated the 21ſt Day of *November* laſt, committed to the Priſon of the *King's-Bench*, for Matters wherewith he ſtands charged, hath ſince that Time been enlarged upon Bail, and being upon Bail, commands ſtill at *Chepſtow* Caſtle, as Deputy-Governor, and hath miſbehaved himſelf, as hath appeared to the ſaid Lords Committees: It is thereupon Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Serjeant at Arms attending this Houſe, or his Deputy or Deputies, do forthwith attach the Body of the ſaid *Francis Spalding*, and bring him in ſafe Cuſtody to the Bar of this Houſe: And this ſhall be a ſufficient Warrant on that Behalf.

Die Jovis, 27 *Die Martii*, 1679.

Captain *Francis Spalding* being brought to the Bar by the Serjeant at Arms, was aſked, Whether he is not under Bail? Which he acknowledged; and that Sir *Ralph Delaval* and Mr. *Banks* are his Bail, taken in the *King's-Bench*; and being aſked, Why he went down to *Chepſtow* Caſtle, being a Priſoner under Bail, and by whoſe Order? He ſaid, He had no Order for it, but went of his own Head. Then the Matter wherewith he was charged, and for which he was committed on the 21ſt of *November* laſt, was read, and alſo the Depoſition of *Thomas Crowder*, a Soldier of that Garriſon, was read, &c.

Whereas Captain *Francis Spalding*, who was on the 21ſt of *November* laſt committed to the Priſon of the *King's-Bench*, there to remain in ſafe Cuſtody 'till further Order, hath ſince procured his Enlargement upon Bail, and repaired to *Chepſtow* Caſtle, as Deputy-Governor thereof, and miſbehaved himſelf there, as appeareth by the Depoſition of *Thomas Crowder*, and other Matters, upon which he was this Day examined at the Bar, being now in the Cuſtody of the Serjeant at Arms attending this Houſe: It is Ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid *Francis Spalding* be re-committed to the Priſon of the *King's-Bench*, there to remain in ſafe Cuſtody 'till further Order; and that the ſaid Serjeant at Arms, or his Deputy, take care to convey him, the ſaid *Francis Spalding*, to the ſaid Priſon: And this ſhall be a ſufficient Warrant on that Behalf.

25 *Martii*, 1679.

Upon Report made by the Earl of *Clarendon*, from the Lords Committees, for examining Matters relating to the Diſcovery of the late horrid Conſpiracy, That their Lordſhips are of Opinion, that *Edward Turner*, a Prieſt and Jeſuit, who hath been examined before them, and is now in the Cuſtody of *Francis Strutt*, a Meſſenger, ſhould be committed to Priſon: It is Ordered, That the ſaid *Francis Strutt* ſhall forthwith deliver the ſaid *Edward Turner* into the Priſon of the *Gate-houſe*, at *Weſtminſter*, there to remain as a Priſoner, 'till he ſhall be delivered by due Courſe of Law.

To Francis Strutt, *Meſſenger, his Deputy and Deputies, and to the Keeper of the Priſon of the* Gate-houſe.

15 *Aprilis*,

15 *Aprilis*. 1679.

Whereas Sir *William Andrews* is ſeized on, and brought to Town in Cuſtody, as an Agent, in the late horrid Conſpiracy againſt the King: It is this Day Ordered, That the Officer, in whoſe Cuſtody the ſaid Sir *William Andrews* is, ſhall forthwith deliver the ſaid Sir *William Andrews* into the Priſon of the *Gatehouſe*, at *Weſtminſter*, there to remain a Priſoner 'till further Order.

28 *Aprilis*, 1679.

Upon Report made from the Lords Committees, for examining Matters relating to the Diſcovery of the late horrid Conſpiracy, That their Lordſhips have received Information made upon Oath, that Sir *William Andrews*, now Priſoner in the *Gatehouſe*, at *Weſtminſter*, is engaged in the Conſpiracy againſt His Majeſty's Perſon and Government: It is thereupon Ordered, by the Lords Spiritual and Temporal in Parliament aſſembled, That the Keeper of the *Gatehouſe* aforeſaid be, and is hereby required to take care, that the ſaid Sir *William Andrews* be forthwith conveyed and ſafely delivered into the *Tower* of *London*, there to remain a Priſoner, 'till he ſhall be diſcharged by due Courſe of Law; and for ſo doing this ſhall be a ſufficient Warrant.

21 *Aprilis*, 1679.

Upon Report from the Committee for Examinations, That *James Allen*, who was taken into Cuſtody, being charged with encouraging *Elizabeth Oxley* to fire Houſes, hath been examined by their Lordſhips, and denieth what is charged upon him; and in regard the Examinations taken concerning a Houſe fired in *Fetter-Lane*, are before a Committee of Commons: It is Ordered, That the Serjeant at Arms attending this Houſe, do forthwith carry the ſaid *James Allen* to the ſaid Committee, to be examined, and diſpoſed of as they pleaſe.

Upon Report from the Committee of Examinations, That their Lordſhips think it neceſſary, that *William Sturges*, now a Priſoner in the Gaol at *Chelmsford*, ſhould be brought to Town: It is Ordered, That the Serjeant at Arms attending this Houſe, do forthwith repair to the Gaol at *Chelmsford*, in *Eſſex*, and bring thence the Body of the ſaid *William Sturges*, and deliver him into the Priſon of the *Gatehouſe* at *Weſtminſter*, there to remain a Priſoner 'till further Order.

23 *Aprilis*, 1679.

Upon Report from the Lords Committees for Examinations, That their Lordſhips find it requiſite, that *David Lewis*, who hath been tried and condemned as a Popiſh Prieſt, at the Aſſizes held for the County of *Monmouth*, and is now in Gaol there, may be brought to Town: It is Ordered, That the Sheriff for the ſaid County of *Monmouth* be, and is hereby required to take Care, and give Order for the ſpeedy conveying of the ſaid *David Lewis* in Safety from the ſaid Gaol, to be delivered into the Priſon of *Newgate*, the Charges of which Service ſhall be allowed to the ſaid Sheriff upon his Account in the *Exchequer*.

The like Order for *Roger Hanſlip*, in the Gaol at *Glouceſter*.

The like Order for *John Kemble*, in the Gaol at *Hereford*.

The like Order for *Francis Johnſon*, alias *Webb*, in the Gaol at *Worceſter*.

8 *Maii*, 1679.

The Earl of *Clarendon* reported from the Lords Committees for Examinations, That *William Harcourt*, the Jeſuit, is taken, and now in the Hands of the Officer that took him: It is Ordered, That the ſaid *William Harcourt* be brought to the Bar preſently.

Eodem Die poſt Meridiem.

William Harcourt was brought to the Bar, and being there charged with Treaſon, the Houſe made the following Order:

Whereas *William Harriſon*, alias *Harcourt*, was this Day brought to the Bar; and was there charged with High Treaſon: It is Ordered, That the Gentleman Uſher of the Black Rod, attending this Houſe, do take ſpecial Care forthwith to convey the ſaid *William Harriſon*, alias *Harcourt*, in Safety to *Newgate*, there to remain a Priſoner, 'till he ſhall be diſcharged by due Courſe of Law.

To the Gentleman-Uſher of the Black Rod, attending this Houſe, &c.

Die Lunæ, 19 *Maii*, 1679.

Whereas *Richard Gerrard*, Eſq; is charged upon Oath with Treaſon: It is Ordered, That the Keeper of the Priſon of the *Gatehouſe*, at *Weſtminſter*, (in whoſe Cuſtody the ſaid *Richard Gerrard* now is) be, and is hereby required forthwith to take care for the conveying of the ſaid *Richard Gerrard* to the Priſon of *Newgate*, there to remain a Priſoner 'till he ſhall be diſcharged by a due Courſe of Law; and this ſhall be a ſufficient Warrant in that Behalf.

30 *Octobris*, 1680.

It being ſignified to this Houſe, That *Oliver Plunket*, the Titular Primate of *Ardmagh* in the Kingdom of *Ireland*, is, by His Majeſty's Order, brought over hither, in order to his Trial here, and is now in Cuſtody in the Hands of a Meſſenger: It is Ordered, That the Meſſenger, in whoſe Hands the ſaid *Oliver Plunket* now is, be, and is hereby authorized and required forthwith to convey and deliver the Body of the ſaid *Oliver Plunket* into the Priſon of *Newgate*, and that the Keeper of the ſaid Priſon do keep him there in Safety, until he ſhall be diſcharged by due Courſe of Law; and that the ſaid Keeper and his Under-Officers do take care, that the ſaid *Oliver Plunket* be kept as a cloſe Priſoner, 'till the Pleaſure of this Houſe be further ſignified; and this ſhall be a ſufficient Warrant in that Behalf.

To the Meſſenger in whoſe Cuſtody the ſaid Oliver Plunket *is, and alſo to the Keeper of the Priſon of* Newgate, *his Deputies and Under-Officers, and every of them.*

4 *Januarii*, 1680.

Ordered, by the Lords Spiritual and Temporal in Parliament aſſembled, That *Mr. Attorney-General* do peruſe the Information read this Day, and draw Warrants for the Commitments of Sir *John Fitzgerald*, Colonel *Pierce Lacy*, and Lieutenant Colonel *Bradley*, as may be available in the Law, and attend the Judges for their Aſſiſtance therein, and preſent the ſame to the Houſe To-morrow, at Ten of the Clock in the Forenoon.

Ordered, That Sir *John Fitzgerald*, Colonel *Pierce Lacy*, and Lieutenant Colonel *Bradley*, do remain in the Cuſtody of the Purſuivant, as now they are, 'till the Houſe gives further Order.

5 *Januarii*, 1680.

Ordered, By the Lords Spiritual and Temporal in Parliament aſſembled, That Sir *John Fitzgerald* be committed to the *Gatehouſe* for Treaſon, in compaſſing the King's Death, and in levying War, and practiſing to introduce a Foreign Force into the Kingdom of *Ireland*, and to depoſe the King from the Crown of *Ireland*; and that the Meſſenger, in whoſe Hands the ſaid Sir *John Fitzgerald* is, be, and is hereby authorized and required, forthwith to deliver and convey the Body of the ſaid Sir *John Fitzgerald* into the Priſon of the *Gatehouſe*; and that the Keeper of the ſaid Priſon do receive and keep him there in ſafe Cuſtody, 'till he ſhall be diſcharged by due Courſe of Law: And this ſhall be a ſufficient Warrant in that Behalf.

Ordered, By the Lords Spiritual and Temporal in Parliament aſſembled, That *Pierce Lac.*, Eſq. be committed to *Newgate* for Treaſon, in compaſſing the Death of the King, and in levying War, and practiſing to introduce a Foreign Force into the Kingdom of *Ireland*; and to depoſe the King from his Crown of *Ireland*, and that the Meſſenger, in whoſe Hands the ſaid *Pierce Lacy* now is, be, and is hereby authorized and required, forthwith to convey and deliver the Body of the ſaid *Pierce Lacy* into the Priſon of *Newgate*; and that the Keeper of the ſaid Priſon do receive and keep him there in ſafe Cuſtody, until he ſhall be diſcharged by due Courſe of Law: And this ſhall be a ſufficient Warrant on that Behalf.

The like Order for Colonel *William Bradley*.

Die Martis, 10 *Die Decembris*, 1689.

Ordered, By the Lords Spiritual and Temporal in Parliament aſſembled, That Mr. *Vernatti*, now in Cuſtody, do ſtand committed to the Gentleman-Uſher of the Black Rod attending this Houſe. And it is further Ordered, That the ſaid Gentleman-Uſher go to the Lodging of the ſaid *Vernatti*, and ſecure his Papers, and ſeal them up in his Preſence, and ſet a Guard on his Houſe or Lodging.

PRECEDENTS *out of the Journals of the Houſe of* COMMONS.

No. II.

24 *Martii*, 14 *Car.* II.

UPON Information, That *George Withers* had been the Author and Publiſher of a ſcandalous and ſeditious Pamphlet, to enrage the People, and to vilify and defame the Members of this Houſe, and to blemiſh the Honour and Juſtice of this Houſe, and their Proceedings, and was now a Priſoner in *Newgate*:

Reſolved, That the ſaid *George Withers* be brought in Cuſtody of the Serjeant at Arms attending this Houſe, or his Deputy, to the Bar of this Houſe, at Four of the Clock this Afternoon, to be examined touching the Matters objected againſt him; and the Keeper of *Newgate*, or his Deputy, is to cauſe him to be brought accordingly.

Reſolved, That this Houſe do adjourn 'till Three of the Clock this Afternoon.

George Withers being then brought in Cuſtody to the Bar of this Houſe, and the ſcandalous, ſeditious Libel, with which he ſtands charged, being ſhewn unto him, the ſame being in Two diſtinct Papers; upon View of the firſt of them, he declared, *That the ſame might be his Hand, but that it was but Parcel of what he intended*; and the other Writing being ſhewn unto him, he confeſſed the ſame to be of his own Hand-Writing; and two Witneſſes being called in, *viz. Henry Northrop*, and *Robert Heybourne*, and teſtifying that they took the ſaid Papers from under Mr. *Withers*'s Hand, and that he was writing Part of them juſt when they were taken from him; and that he did, upon Examination before *Mr. Attorney-General*, confeſs the ſaid Papers to be of his own contriving and drawing.

Reſolved upon the Queſtion, That *George Withers*, who was this Day brought from the Priſon of *Newgate* to the Bar of this Houſe, be ſent Priſoner, and delivered into the Cuſtody of the Lieutenant of the *Tower*, there to be kept in cloſe Cuſtody, and to be denied Pen, Ink, and Paper, and debarred from having any Company to come unto him. And it is referred unto Mr. *Pryn*, Mr. Serjeant *Charleton*, Mr. Solicitor-General, Serjeant *Maynard*, Dr. *Birkenhead*, Mr. *Thurland*, Mr. *Smyth*, Mr. *Vaughan*, and Mr. *Clifford*, or any Three of them, to peruſe the ſeditious, infamous Libel by him contrived, and draw up an Impeachment againſt him, and report it to the Houſe at their next Meeting.

21 *Octobris*, 1678.

Ordered, That a Committee be appointed to examine concerning the Murder of Sir *Edmundbury Godfrey*, and to enquire into the Manner and Means how he came by his Death; and likewiſe to enquire into the Particulars of the Plot and Conſpiracy, mentioned in His Majeſty's Speech, againſt his Perſon and Government; which Committee was impowered to ſend for Perſons, Papers, and Records.

Ordered, That an Addreſs be made to His Majeſty by ſuch Members of this Houſe as are of His Majeſty's Privy-Council, humbly to deſire His Majeſty, that all Papers which do relate to the Plot and Conſpiracy, mentioned in His Majeſty's Speech, againſt his Perſon and Government, may be communicated to the ſaid Committee.

23 *Octobris*, 1678.

Reſolved, &c. That the Matter concerning the Plot and Conſpiracy, mentioned in his Majeſty's Speech, againſt his Perſon and Government, be heard at the Bar of the Houſe.

Ordered, That Mr. *Michael Godfrey* be forthwith ſent for to attend with the Papers and Examinations, taken by Sir *Edmunbury Godfrey*, and now remaining in his Cuſtody ſealed up, touching the Plot and Conſpiracy mentioned in his Majeſty's Speech.

24 *Octo-*

24 *Octobris*, 1678.

The Papers of Examinations taken by Sir *Edmundbury Godfrey*, touching the Plot and Conſpiracy, mentioned in His Majeſty's Speech, which were delivered in by Mr. *Michael Godfrey*, were opened, and by *Mr. Speaker* read to the Houſe.

Ordered, That the Chairman of the Committee appointed to examine concerning the Murder of Sir *Edmundbury Godfrey*, do take into his Cuſtody the Papers of Examinations, taken by Sir *Edmundbury Godfrey*, concerning the Plot, mentioned in His Majeſty's Speech.

Ordered, That Mr. *White*, alias *Whitebread*, and Mr. *Micho*, be removed from the Houſe where they are now, to *Newgate*, in caſe they be in a Condition fit to be removed.

25 *Octobris*, 1678.

Mr. Speaker acquaints the Houſe, That in purſuance of the Order of the Houſe of Yeſterday, he had waited upon His Majeſty, and acquainted him with the Informations the Houſe had Yeſterday received, and that His Majeſty was pleaſed to acknowledge the great Care of this Houſe in the Preſervation of His Perſon and Government; and that His Majeſty was informed, That Mr. *White*, alias *Whitebread*, and Mr. *Micho*, were at preſent very ſick, but that His Majeſty would ſend to ſee them; and if they were in a Condition fit to be removed, they ſhould be forthwith ſent to *Newgate*.

Ordered, That the Members of this Houſe, who are Juſtices of the Peace for the County of *Middleſex*, do repair to the Lodgings of Mr. *White*, alias *Whitebread*, and Mr. *Micho*, and take their Examinations touching the Plot and Conſpiracy, mentioned in His Majeſty's Speech, againſt his Perſon and Government; and do iſſue out their Warrants for ſearching their Lodgings, and ſeizing all ſuch Papers and Writings relating thereto, as ſhall be there found.

25 *Octobris*, 1678. *Poſt Meridiem.*

Ordered, That the Secretaries be deſired to move the King, That the Keys of Mr. *Langhorn*'s Chamber may be delivered by the Meſſengers, in whoſe Hands the ſame are, to the Committee appointed by the Houſe to ſearch Mr. *Langhorn*'s Papers and Writings.

26 *Octobris*, 1678.

Ordered, That an humble Addreſs be made to His Majeſty, by ſuch Members of this Houſe as are of His Majeſty's moſt Honourable Privy-Council, to deſire His Majeſty, That Mr. *Coleman*'s Papers, and all other Papers relating to the Plot and Conſpiracy mentioned by His Majeſty in his Speech, may be communicated to the Houſe.

Mr. Secretary *Williamſon* informs the Houſe, That in Purſuance of the Order of Yeſterday, he had attended His Majeſty, and acquainted him with the Deſires of this Houſe, That a Committee of this Houſe might have Leave to ſearch Mr. *Langhorn*'s Papers; and that His Majeſty was pleaſed to give Leave that the ſame may be ſearched, and had appointed Two of the Clerks of the Council to aſſiſt the Committee therein: And that His Majeſty was pleaſed to deliver him ſome of Mr. *Coleman*'s Papers ſealed up, and ordered him to deliver the ſame to the Houſe; and had alſo commanded him to acquaint the Houſe, That the reſt of Mr. *Coleman*'s Papers were at preſent under Examination before the Houſe of Lords; and that ſo ſoon as the Lords had done with them, they ſhould be communicated to this Houſe: And the Papers were accordingly, by Mr. Secretary *Williamſon*, delivered in ſealed up.

29 *Octobris*, 1678.

Ordered, That His Majeſty be humbly deſired by ſuch Members of this Houſe as are of His Majeſty's moſt Honourable Privy-Council, that an Inventory, or Liſt of all Mr. *Coleman*'s Papers, which have been ſorted by the Clerks of the Council, may be communicated to this Houſe; and that all thoſe Papers which are not ſorted, may be delivered over to a Committee of this Houſe.

Ordered, That a Committee be appointed to examine Mr. *Coleman*, touching the Plot and Conſpiracy mentioned in His Majeſty's Speech.

31 *Octobris*, 1678.

This Houſe being informed that the Clerk of the Council was attending without, with Mr. *Coleman*'s Papers;

Ordered, That the Papers be delivered to the Clerk of the Houſe, and by him tranſmitted to the Committee appointed to examine the ſame.

2 *Novembris*, 1678.

Ordered, That the Clerk of the Council now in waiting, do forthwith attend with Mr. *Harcourt*'s Papers and Writings; and that all other Papers and Writings relating to the Plot, mentioned in His Majeſty's Speech, either in the Hands of the Secretaries of State, or in the Hands of the Clerks of the Council, be forthwith communicated to this Houſe, according to the Leave graciouſly given by His Majeſty.

22 *Novembris*, 1678.

Reſolved, That an humble Addreſs be made to His Majeſty by ſuch Members of this Houſe as are of His Majeſty's Privy-Council, to deſire His Majeſty, That ſuch Letters and Papers which relate to the Plot now under Examination, as have not been peruſed by this Houſe, may be communicated to them.

29 *Novembris*, 1678.

A Meſſage from the Lords by Sir *John Coel*, and Sir *Samuel Clark*:

Mr. Speaker,

"The Lords have received Information, That there is a Faculty under "the Seal of Cardinal *Barberini*, for diſpenſing with the taking of the "Oaths, and other Things, in the Hands of a Member of this Houſe, "which their Lordſhips deſire may be communicated to them."

Sir *John Knight* acquaints the Houſe, That the Paper mentioned by the Lords was found among Mr. *Ireland*'s Papers, and he delivered the ſame in at the Clerk's Table; which being read by *Mr. Speaker*:

Ordered, That the ſaid Paper be ſent to the Lords, and that *Mr. Speaker* do acquaint the Meſſengers, That when their Lordſhips have peruſed the ſame, this Houſe does expect it ſhould be returned again, in order to be entered in the Journal of this Houſe; and the Meſſengers being called in, the ſaid Paper was delivered to them, and *Mr. Speaker* acquainted them with the Pleaſure of the Houſe.

26 *Aprilis*, 1679.

Reſolved, That an humble Addreſs be made to His Majeſty, to deſire His Majeſty to give Order for the executing of *Pickering*; and alſo to give Order to the Judges, to iſſue out their Warrants for executing the ſeveral Popiſh Prieſts which they have condemned in their ſeveral Circuits.

5 *Maii*, 1679.

The Lord *Ruſſel* acquaints the Houſe, "That His Majeſty had commanded him to let the Houſe know, that His Majeſty is willing to "comply with the Requeſt made to him by this Houſe, concerning "*Pickering*, and that the Law ſhall paſs upon him accordingly.

"As to the condemned Prieſts, the Houſe of Peers have ſent for them, "in order (as His Majeſty conceives) to ſome Examinations."

9 *Maii*, 1679. *Poſt Meridiem.*

Mr. *Hampden* reports from the Committee appointed to inſpect the Lords Journals, and ſee, *inter alia*, upon what Grounds the condemned Popiſh Prieſts are ſent for, That the Committee had inſpected the Journals, and taken out Copies of their Proceedings, which he reported to the Houſe.

20 *Maii*, 1679.

Ordered, That a Meſſage be ſent to the Lords, concerning the condemned Popiſh Prieſts, ſent for up to *London* from the ſeveral County Gaols, by Order of their Lordſhips.

22 *Maii*, 1679.

Sir *William Franklyn* reports from the Committee appointed to draw up and prepare a Meſſage to be ſent to the Lords, concerning the Popiſh Prieſts condemned in the Circuits, That the Committee had agreed upon a Meſſage to be reported to the Houſe, which he read in his Place, and afterwards delivered the ſame in at the Clerk's Table, where the ſame was twice read, and upon the Queſtion, agreed, and is as followeth, *(viz.)*

"The Houſe of Commons having made an humble Addreſs to His "Majeſty, That he would be pleaſed to give Order to the Judges, to "iſſue out their Warrants for the executing the ſeveral Popiſh Prieſts "condemned in the ſeveral Circuits; and His Majeſty having been gra"ciouſly pleaſed to ſignify to the Houſe of Commons, That your Lord"ſhips have ſent for them, in order (as he conceived) to ſome Examination:

"And the Houſe of Commons being alſo informed, That the ſaid "Prieſts have, by Order from your Lordſhips, not only been brought "out of the ſeveral Counties where they were condemned, but continued "yet in *Newgate*, and other Priſons, in or about the Cities of *London* and "*Weſtminſter*, by reaſon whereof the Execution of the Sentence pro"nounced upon them is ſtill delayed, do deſire of your Lordſhips, That "the ſaid Prieſts may be forthwith remanded to the ſeveral Counties "where they were condemned, that ſo they may be executed, according "to the Judgments paſſed upon them."

25 *Octobris*, 1 *Will. & Mariæ.*

The Houſe being informed, That ſeveral of the Priſoners of the *Tower* were now bailing in the Court of *King's-Bench*, being brought thither by the Governor of the *Tower*, by Virtue of a *Habeas Corpus* awarded for that Purpoſe, particularly Sir *Thomas Jenner*, Mr. *Richard Graham*, and Mr. *Philip Burton*:

Ordered, That Sir *Thomas Jenner*, Mr. *Richard Graham*, and Mr. *Philip Burton*, be immediately brought to this Houſe by the Governor of the *Tower*, to anſwer to ſuch Matters as ſhall be objected againſt them.

And *Mr. Speaker* iſſued his Warrant accordingly, and the ſame was ſent by the Serjeant at Arms attending this Houſe.

Afterwards, the Serjeant acquainted the Houſe, That Sir *Thomas Jenner* was bailed, and gone out of Court, and that Mr. *Graham* was bailing in the Court; and that notwithſtanding, he had delivered the Warrant to the Governor of the *Tower*, and that he was coming with Mr. *Graham*, and Mr. *Burton*.

Ordered, That Sir *Thomas Jenner* be ſent for in Cuſtody of the Serjeant at Arms attending this Houſe, to anſwer to ſuch Matters as ſhall be objected againſt him.

The Houſe being informed, That Mr. *Burton* and Mr. *Graham* were at the Door, they were ſeverally called in to the Bar of the Houſe, and charged with the ſeveral Matters mentioned in the ſaid Report, and heard what they could ſay touching the ſame.

And being withdrawn,

Ordered, That Mr. *Richard Graham*, and Mr. *Philip Burton*, be committed to the Cuſtody of the Serjeant at Arms attending this Houſe, for ſeveral High Crimes and Miſdemeanours objected againſt them.

Reſolved, That a Committee be appointed to examine Witneſſes againſt Mr. *Graham* and Mr. *Burton*, and to prepare a Charge againſt them.

And it is referred to, *&c.*

4 *Januarii*, 1697.

The Houſe being informed, That * Mr. *Reginald Marriot* had ſent to ſeveral Members of this Houſe Letters, acknowledging, That he had been concerned in the irregular Indorſement of *Exchequer* Bills; and therein offering fully to relate how that notorious Practice hath been projected and carried on, and in what Manner he had been drawn into the ſame:

Ordered, That the ſaid Mr. *Reginald Marriot* be ſummoned to attend this Houſe immediately; and the ſaid Mr. *Marriot* attending accordingly, he was brought in by the Serjeant at Arms attending this Houſe to the Bar, where he delivered an Account of his Knowledge of that Matter in Writing, ſigned by himſelf, which he read at the Bar, and afterwards delivered in to the Houſe.

* Mr. *Reginald Marriot* was under Proſecution, by Order of the Lords Commiſſioners of the Treaſury, and was under Bail.

Ordered,

Ordered, That the Examinations taken before the Lords of the Treaſury, relating to the irregular Indorſement of the *Exchequer* Bills, be laid before this Houſe.

A Motion being made, That the Houſe will order, that all Proſecutions at Law againſt the ſaid Mr. *Marriot*, be ſtayed during the Pleaſure of the Houſe;

And a Debate ariſing thereupon:

Reſolved, That the Debate be adjourned 'till To-morrow Morning.

Ordered, That the ſaid Mr. *Marriot* be taken into Cuſtody of the Serjeant at Arms attending this Houſe; and that no Perſon be permitted to converſe with, or bring any Letters to him, without Leave of the Houſe.

5 *Januarii*, 1697.

Mr. *Lowndes*, according to Order, preſented to the Houſe ſeveral Papers relating to the Examinations, taken before the Lords of the Treaſury, touching the falſe Indorſement of the *Exchequer* Bills.

The Houſe reſumed the adjourned Debate of Yeſterday, touching the ordering the Stay of any Proſecution at Law againſt Mr. *Marriot*.

Ordered, Nemine Contradicente, That all Proſecutions at Law againſt Mr. *Reginald Marriot*, in relation to the falſe Indorſement of *Exchequer* Bills be ſtayed, during the Pleaſure of this Houſe.

But nothing more was done in this Buſineſs *; for *April* the third, 1704, her Majeſty came to the Houſe, and prorogued the Parliament, and concluded her Speech thus:

My Lords and Gentlemen,

" AT the Opening of this Seſſion, I did earneſtly expreſs my Deſires of " ſeeing you *in perfect Unity among yourſelves*, as the moſt effectual " Means imaginable to diſappoint the Ambition of our Enemies, and re- " duce them to an honourable and laſting Peace; and *though this has not " met with all that Succeſs which I wiſhed and expected*, yet being fully con- " vinced, that nothing is ſo neceſſary to our common Welfare, I am not " diſcouraged from perſiſting in the ſame earneſt Deſires, That you would " go down into your ſeveral Counties, ſo diſpoſed to *Moderation and Uni- " ty*, as becomes all thoſe who are joined together in the ſame Religion " and Intereſt."

NUMBER XXXVI.

An Account of what paſſed moſt remarkable in the Seſſions of Parliament, 1709, *in the Houſe of Commons, relating to the Caſe of Dr.* HENY SACHEVERELL †.

December the 13*th*, 1709.

A Complaint being made, this Day, in the Houſe of Commons, of two printed Books, the one entituled, *The Communication of Sin*; *A Sermon preached at the Aſſizes held at* Derby, Auguſt 15, 1709, *by Doctor* Henry Sacheverell: And the other entituled, *The Perils of Falſe Brethren both in Church and State; ſet forth in a Sermon preached before the Right Honourable the Lord Mayor, Aldermen, and Citizens of* London, *at the Cathedral Church of St.* Paul's, *on the* 5*th of* November, 1709, preached alſo by the ſaid Dr. *Henry Sacheverell*; and both printed for *Henry Clements*: Which Books were delivered in at the Table; where ſeveral Paragraphs in the Epiſtle Dedicatory, preceding the firſt mentioned Book, and alſo ſeveral Paragraphs in the latter Book, were read.

Reſolved,

That a Book, entituled, *The Communication of Sin*; *being a Sermon preached at the Aſſizes held at* Derby, Auguſt 15, 1709: And a Book, entituled, *The Perils of Falſe Brethren both in Church and State*; *ſet forth in a Sermon preached before the Right Honourable the Lord Mayor, Aldermen, and Citizens of* London, *at the Cathedral Church of St.* Paul, *on the* 5*th of* November, 1709, are malicious, ſcandalous, and ſeditious Libels; highly reflecting upon her Majeſty and Government, the late happy Revolution, and the Proteſtant Succeſſion as by Law eſtabliſhed, and both Houſes of Parliament; tending to alienate the Affections of her Majeſty's good Subjects, and to create Jealouſies and Diviſions among them.

Ordered,

That Dr. *Henry Sacheverell*, and *Henry Clements*, do attend at the Bar of the Houſe To-morrow.

John Dolben, Eſq. made the firſt Motion againſt the two Sermons, and was ſeconded by *Spencer Cowper*, Eſq.

They were oppoſed by ſeveral Gentlemen; who ſaid, they did not perceive there was any thing in the Sermons malicious, ſcandalous, or ſeditious; nor reflecting on her Majeſty and Government, the late happy Revolution, and the Proteſtant Succeſſion as by Law eſtabliſhed; of which they did not obſerve any Mention; neither had the Paragraphs the leaſt Relation to it. What concerned both Houſes of Parliament, was ſuppoſed to be the Vote paſſed four or five Year before, about the Church being in Danger: And as to that, it was affirmed, the Church was then in Danger, was ſtill in Danger, and, it was to be feared, would always be in Danger; not from her Majeſty's Adminiſtration, but from Papiſts on the one Hand, and Fanaticks on the other; from theſe her profeſſed Enemies, and from *Falſe Brethren*. It was owned, there were ſome warm Expreſſions in the Sermon preached at St. *Paul*'s: And no wonder that a true Son of the Church of *England* ſhould expreſs himſelf with ſome Warmth and Vehemence againſt the Liberties that were taken, and with Impunity, to revile the Church, her Doctrines and Miniſters, to blaſpheme the Name of God, and to inſult, and treat with Contempt, every Thing that is ſacred. To this little was returned, beſides bitter invectives againſt the Sermons; and particularly againſt the Doctrines of *Paſſive Obedience* and *Non-Reſiſtance*.

December 14.

The Houſe being informed, that Dr. *Henry Sacheverell* and *Henry Clements* attended, according to Order; Dr. *Sacheverell* was called in, and, at the Bar, was examined touching the two Sermons Yeſterday complained of to the Houſe: Where he owned the Preaching, the directing of the Printing and Publiſhing the Sermon preached the 5th of *November*, 1709, at the Cathedral Church of St. *Paul*, and the Dedication of it; and alſo, that the Epiſtle Dedicatory to the Sermon, preached at the Aſſizes at *Derby*, the 15th of *Auguſt*, 1709, was agreeable to that which he put to the Impreſſion of that Sermon, which he directed to be printed and publiſhed. And being withdrawn, and a Queſtion being propoſed, That the ſaid Dr. *Henry Sacheverell* be impeached of High Crimes and Miſdemeanours; he was called in again, and aſked, If he had any Thing to offer to the Houſe? When he ſpoke to this Effect:

Mr. Speaker,

" I am very ſorry I am fallen under the Diſpleaſure of this Houſe; I " did not imagine any Expreſſions in my Sermons were liable to ſuch a " Cenſure as you have paſſed upon them. If you had been pleaſed to " have favoured me ſo far, as to have heard me before you paſſed it, I " hope I ſhould have explained myſelf ſo as to have prevented it."

And after being heard, he was directed to withdraw.

Then the Queſtion was inſiſted on, for impeaching the Doctor of High Crimes and Miſdemeanours. And ſeveral Gentlemen ſpoke againſt it, deſiring he might rather be proſecuted by the Attorney-General; and if the Sermons were ſeditious, if they did reflect on her Majeſty and Government, the happy Revolution, and the Proteſtant Succeſſion as by Law eſtabliſhed, the Doctor would be convicted, and puniſhed for them according to his Demerits. But if (as common Fame ſaid) the Judges, and the Queen's learned Counſel, had been conſulted, and were of Opinion; the Doctor could not be puniſhed for them by the ordinary Proceedings in the Courts of Law; they thought it was very unreaſonable, by an Impeachment in Parliament, to endeavour to make a Man guilty, and a Criminal, that, by the Laws of the Land, was innocent. However, it was

Reſolved,

That the ſaid Dr. *Henry Sacheverell* be impeached of High Crimes and Miſdemeanours.

Ordered,

That Mr. *Dolben* do go to the Lords, and, at their Bar, in the Name of all the Commons of *Great-Britain*, impeach the ſaid Dr. *Henry Sacheverell* of High Crimes and Miſdemeanours, and acquaint the Lords, that the Houſe will, in due Time, exhibit Articles againſt the ſaid *Henry Sacheverell*.

Ordered,

That a Committee be appointed to draw up Articles of Impeachment againſt the ſaid Dr. *Henry Sacheverell*.

And a Committee was appointed accordingly. And they have Power to ſend for Perſons, Papers, and Records, and to ſit *de die in diem*.

Then *Henry Clements* was called in, and, at the Bar, was examined touching his Printing and Publiſhing the ſaid two Books: Which he owned, and that he had the Copies of them from Dr. *Sacheverell*. After which he was directed to withdraw.

Ordered,

That the ſaid Dr. *Henery Sacheverell* be taken into the Cuſtody of the Serjeant at Arms attending the Houſe.

Sir *Samuel Gerrard*, Bart. Lord Mayor of the City of *London*, was in the Houſe, in his Place: And the Speaker obſerving to the Doctor, that the Houſe took Notice, he had affirmed, in the Epiſtle Dedicatory to my Lord Mayor of *London*, before the Sermon preached at St. *Paul*'s, that he had publiſhed it by his Lordſhip's Command, he was aſked, Whether my Lord Mayor did command him to publiſh his Sermon? To which he anſwered, " That, in the ſtrict Senſe of the Word *Command*, he did not; " but in the common Acceptation of the Word, as the Deſires of Supe- " riors to their Inferiors are ſaid to be *Commands*, he did *command* him; " for he did deſire and preſs him to print it." Then he gave a particular Account of the Converſation he had, at ſeveral Times, with my Lord Mayor about it; though his Lordſhip thought fit peremptorily to deny it.

After this, the two following Reſolutions paſſed:

Reſolved,

That the Reverend Mr. *Benjamin Hoadley*, Rector of St. *Peter Poor*, *London*, for having often ſtrenuouſly juſtified the Principles on which her Majeſty and the Nation proceeded in the late happy Revolution, hath juſtly merited the Favour and Recommendation of this Houſe.

Reſolved,

That an humble Addreſs be preſented to her Majeſty, that ſhe will be graciouſly pleaſed to beſtow ſome Dignity in the Church on the ſaid Mr. *Hoadley*, for his eminent Services both to Church and State.

Theſe were propoſed by *An. Henley*, Eſq. and ſeconded by Sir *Joſ. Jekyll*. The Houſe was in great Confuſion, it being late, and every one expecting immediately to riſe. However, there were ſeveral Negatives to theſe Reſolutions: And when they came to be conſidered, they were

* For an Account of the Differences between the Lords and Commons, relating to the Examination of *Boucher*, ſee alſo Biſhop *Burnet*'s Hiſtory of his own Time, Vol. II. Page 373, 374.

† The Trial, printed in Vol. V. Page 645. begins with the Proceedings in the Houſe of Lords, and no Notice of the Steps taken in the Houſe of Commons preceding it; therefore the above Proceedings ſhould be read as an Introduction to that Trial.

generally thought to be ſtrange Reſolutions, with Regard to her Majeſty, who had approved a Sermon preached before her by the Biſhop of *Exon*, and deſired him to print it. Againſt that Sermon Mr. *Hoadley* writ, and engaged in Controverſy with the Biſhop; yet he is declared to have juſtly merited the Favour and Recommendation of the Houſe, and the Queen is deſired to beſtow ſome Dignity in the Church on him for theſe eminent Services. This Proceeding was thought ſo improper, ſo indecent to her Majeſty, that ſeveral, who were otherwiſe againſt Dr. *Sacheverell*, blamed it very freely. And it was very obſervable, Mr. *Lechmere* took an Occaſion, ſome Time after, upon another Debate, to cenſure it.

December 15.

Ordered,

That Mr. *Dolben* (when he goes to the Lords to impeach Dr. *Henry Sacheverell* of High Crimes and Miſdemeanours) do acquaint the Lords, That the ſaid *Henry Sacheverell* is in Cuſtody of the Serjeant at Arms attending the Houſe, ready to be delivered to the Gentleman-Uſher of the Black-Rod, when the Lords ſhall pleaſe to give Order therein.

Mr. *Dolben* reported to the Houſe, That he had, purſuant to their Order, been at the Lords; and, at their Bar, had impeached Dr. *Henry Sacheverell* of High-Crimes and Miſdemeanours; and had alſo acquainted the Lords with their other Order.

December 17.

A Petition of *Henry Sacheverel*, D. D. in Cuſtody of the Serjeant at Arms attending the Houſe, was preſented to the Houſe, and read; praying, That the Houſe would be pleaſed to order him to be admitted to Bail, that he may have an Opportunity of making his Defence, being informed, that he is impeached at the Bar of the Houſe of Lords for High Crimes and Miſdemeanours.

Ordered,

That a Committee be appointed to ſearch Precedents concerning the taking Bail in Caſes of Perſons committed for High Crimes and Miſdemeanours; and that they do make their Report thereof to the Houſe upon *Monday* Morning next.

Ordered,

That it be referred to the Committee, who are to draw up the Articles of Impeachment againſt Dr. *Henry Sacheverell*, to ſearch Precedents, and make Report thereof to the Houſe.

There was ſome Debate before the Houſe ordered a Committee.

December 19.

Mr. *Dolben* acquainted the Houſe, That the Committee, who were upon *Saturday* laſt appointed to ſearch Precedents concerning the taking Bail in Caſes of Perſons committed for High Crimes and Miſdemeanours, and to report the ſame to the Houſe this Day, had made all the Progreſs they could in ſo ſhort a Time; but that they found it required more Time, and had directed him to move, That they may have farther Time to make their Report.

Ordered,

That the ſaid Committee do ſearch the Lords Journals, in relation to the Proceedings upon Impeachments by the Commons, and make their Report thereof to the Houſe with all convenient Speed.

Ordered,

That all Committees be adjourned, except the Committee who are appointed to draw up the Articles of Impeachment againſt Dr. *Henry Sacheverell*; and who are to ſearch the Lords Journals in relation to the Proceedings upon Impeachments by the Commons.

December 22.

Mr. *Dolben* reported, from the Committee appointed to ſearch Precedents concerning the taking Bail in Caſes of Perſons committed for High Crimes and Miſdemeanours, and to ſearch the Lords Journals in Relation to the Proceedings upon Impeachments by the Commons, and to make their Report to the Houſe, That they had ſearched Precedents, and the Lords Journals accordingly; and had directed him to report what Precedents they had found; which he read in his Place, and afterwards delivered in at the Table, where the ſame were read.

And a Motion being made, and the Queſtion being put, That Dr. *Henry Sacheverell* be admitted to Bail, according to the Prayer of his Petition, it paſſed in the Negative.

Yea's 79, *No's* 114.

In the Debates on this Matter, there was a great Variety of Opinions: Some thought the Commons might bail a Perſon committed by them, but not in this Caſe: Others, that it was diſcretionary in them, whether they would bail or not; and that this Perſon deſerved it not from them; and one that the Commons could never bail in any Caſe. Others inſiſted, in Favour of Liberty, that if they could bail, they ought to bail; and that they could bail, argued from the Equity and Reaſonableneſs of the Thing, that thoſe who could commit might bail: They ſhewed Precedents in the Caſe of Mr. *Seymour*, and the Smugglers, impeached for High Crimes and Miſdemeanours; in one of which, the Perſons impeached and committed by the Houſe of Commons, were admitted to Bail; in the other, the Commons, upon their Petition, conſented to bail them; and they had been bailed, but their Sureties made Objections to the Condition of their Bonds, and would not ſubmit to it. Beſides, it was urged, that this Caſe was in itſelf bailable, and ſo agreed by all Gentlemen; and that the Doctor's Hardſhip might be the greater, becauſe it was probable, if the Commons did not bail him, he muſt lie in Cuſtody, when bailable by Law, till after the Receſs of Parliament: For the Articles not being exhibited to the Lords againſt him, it was thought the Lords would not take him out of the Cuſtody of the Commons, and commit him upon a general Charge; and till they committed him, they could not bail him. This was his Caſe; for upon Application to the Lords, they refuſed to commit him, till the Commons had exhibited their Articles: The Lords ſaid, the Commons might never exhibit any; and they would not do ſo unreaſonable a Thing, as to commit any one on a general Charge. And ſo he lay a Priſoner by the Commitment of the Houſe of Commons, in a Caſe bailable by Law (and for which there were Precedents, for the Commons admitting to Bail), from *December* 14, to *January* 12. It is fitting to obſerve, That ſome urged againſt the bailing the Doctor, one Part of the Meſſage delivered by Mr. *Dolben* to the Lords, when he impeached him at their Bar, "That the Doctor was in Cuſtody of the "Serjeant at Arms attending the Houſe, ready to be delivered to the "Gentleman-Uſher of the Black-Rod, when the Lords ſhould pleaſe to "give Order therein:" But others, that agreed with them againſt admitting him to Bail, approved of Expedients to get off that, and did not think it reaſonable to preclude him from it by their own Meſſage.

There was one Thing in the Debates gave ſome Diverſion to the Houſe. An honourable Member declaring himſelf againſt bailing Dr. *Sacheverell*, ſaid, He would put them in Mind of the Caſe of Mr. *Thompſon*: (*ante* Vol. VII. Pag. 491.) He was a Parſon too; he was impeached by the Commons for High-Crimes and Miſdemeanours; he was bailed by them; he afterwards ran beyond Sea, turned Prieſt, and ſo evaded their Juſtice; and he believed this Fellow (as he was pleaſed to call him) would do ſo too. To this, another Gentleman anſwered, He believed the noble Lord was as much miſtaken in his Concluſion, as he was in his Premiſes: He did not believe the Doctor would run away, if he was bailed: And as to the Precedent of Mr. *Thompſon*, the Noble Lord was miſtaken in every Part of it, except that he was a Parſon; for he was not bailed by the Commons, neither did he run beyond Sea, and turn Prieſt, and ſo evade their Juſtice; for the Parliament that impeached him was ſoon after diſſolved: He was afterwards made Dean of *Briſtol*, and lived and died ſo.

January 9.

Mr. *Dolben* reported from the Committee appointed to draw up Articles of Impeachment againſt Dr. *Henry Sacheverell*, That they had drawn up Articles accordingly, which they had directed him to report to the Houſe: And he read them in his Place, and afterwards delivered them in at the Table, where they were read.

It was then propoſed, That it being impoſſible the Members could make their Obſervations on the Articles in ſuch Readings, and the Honour of the Houſe being concerned to have them ſuch as might be juſtified, a little Time ſhould be allowed, before they were read the ſecond Time, to conſider them; and to convince others, they intended not Delay by it, they only aſked till *Wedneſday*. This was ordered; but then it was moved, that no Copies might be taken of the Articles, becauſe it was not proper they ſhould be made publick in the Coffee-Houſes, nor ſhewed to the Doctor, before they were agreed to, and carried up to the Lords. On the other Hand, it was urged, this was precluding Members of their Right, by unreaſonable Suppoſitions; that they had a Right to take Copies of any Papers before the Houſe, for their Information; and it was not to be imagined, they would publiſh the Articles in Coffee-Houſes, or ſhew them to the Doctor. And, what if they did ſhew them to him? Were they to be kept a Secret from him? Would he not have a Copy of the Articles ordered him by the Lords, as ſoon as they were carried to them? And what Advantage would it be to him, or Diſadvantage to the Commons, to ſee them ſooner? But if Copies were not to be taken of the Articles, it was no Favour, no Benefit to put off the Conſideration of them; it had an Appearance of doing what was fair and reaſonable, but would, in Truth, be doing nothing; for without taking Copies of them, they could not be conſidered. And it having been ſaid, by one Gentleman, That this was an extraordinary Thing, and what had never been done before; another replied, He thought it extraordinary, but could not agree, it had never been done before; he remembered the like, when Sir *John Fenwick*'s Confeſſions had been read in the Houſe of Commons; they were ordered to be ſealed up by the Speaker, that no Copies might be taken of them. He did not approve that Precedent ſo well as to follow it; he wiſhed Copies had been taken of thoſe Papers, and that they had been printed; he believed, the Kingdom would have been the better for them at this Day.

After theſe Debates, this Motion was waved.

January 11.

The Order of the Day being read, for the Reading a ſecond Time the Report from the Committee to whom it was referred to draw up Articles of Impeachment againſt Dr. *Henry Sacheverell*;

Ordered,

That the Report be read Paragraph by Paragraph.

Then the firſt Paragraph (being the Preamble to the Articles) being read, and a Motion being made, and the Queſtion being put, That the Report be re-committed; it paſſed in the Negative.

Yea's 131, *No's* 232.

Ordered,

That Candles be brought in; and Candles were brought in accordingly.

Reſolved,

That the Houſe doth agree to the ſaid firſt Paragraph.

Then the Articles being ſeverally read, one by one, were (upon the Queſtion ſeverally put thereupon) agreed unto by the Houſe, to be the Articles to be exhibited againſt the ſaid Dr. *Henry Sacheverell*.

Then the laſt Paragraph being read, the ſame was alſo agreed unto by the Houſe.

Ordered,

That the Articles be engroſſed.

There were great Debates in relation to the re-committing the Articles of Impeachment. In which, great Miſtakes were ſhewn in the Preamble to the Articles, the Recitals partial, and wrong Inferences drawn from them. And the Articles were ſaid to be ſo looſe and uncertain, it was impoſſible any one could plead to them; and it was preſſed, that thoſe who drew them up, would let the Houſe know, on what Paragraphs in the Sermon they were grounded. To this was anſwered, That was too early, when they only had the Preamble under Conſideration; when the Articles were read, they would produce the Paſſages in the Sermons. But then, though the Paſſages were deſired, they called for the Queſtion, and never performed what they had promiſed.

January

January 12.

The Engroſſed Articles of Impeachment againſt Dr. *Henry Sacheverell* were read.

Ordered,

That the ſaid Articles be carried to the Lords by Mr. *Dolben*.

At this Time, there was no Debate nor Diviſion upon the Articles, only a Negative to the Queſtion of carrying them up to the Lords. Gentlemen ſaw how hardly they had been treated the Day before by the Majority, and therefore contented themſelves with ſhewing their Diſlike of theſe Proceedings in this Manner.

Mr. *Dolben* carried theſe Articles to the Lords, who read them the firſt Time, and took Dr. *Sacheverell* into the Cuſtody of the Black-Rod.

January 13.

The Serjeant at Armsacquainted the Houſe, That, in purſuance of their Order of the 15th of *December* laſt, he did Yeſterday deliver Dr. *Henry Sacheverell* to the Deputy of the Gentleman-Uſher of the Black-Rod; and had taken a Diſcharge for him.

Dr. *Sacheverell* petitioned the Lords to be bailed. Their Lordſhips ordered a Committee to enquire into the Validity of his Bail; allow'd him Counſel, and a Copy of the Articles.

January 14.

Dr. *Sacheverell* is ordered to give in his Anſwer to the Articles next *Wedneſday*. The Lords accepted of Dr. *Lancaſter*, Vice-Chancellor of *Oxon*, and Dr. *Bowes*, for his Bail: And accordingly he was bailed, himſelf in a Recognizance of 6000*l.* and his Sureties each in 3000*l.*

Serjeant *Prat*, Sir *Simon Harcourt*, Mr. *Raymond*, and Mr. *Phipps*, are allowed, by the Lords, to be Counſel for Dr. *Sacheverell*; and Mr. *Huggins* to be his Solicitor.

January 16.

Dr. *Sacheverell*, upon his Petition, has farther Time given him to put in his Anſwer.

January 25.

Dr. *Henry Sacheverell* attended the Houſe of Lords, and delivered in his Anſwer to the Articles of Impeachment againſt him; which was read. And being aſked, Whether or no he would abide by it? He anſwered in the Affirmative; and then the Doctor was ordered to withdraw. Their Lordſhips ſent his Anſwer down to the Commons.

A Meſſage from the Lords, by Mr. *Rogers*, and Mr. *Hiccocks*, That they were commanded to acquaint the Houſe of Commons That Dr. *Henry Sacheverell* hath put in his Anſwer to the Articles of Impeachment, ſent from the Houſe of Commons againſt him; which their Lordſhips communicate to the Houſe, and deſire that the ſaid Original Anſwer may be return'd with convenient Speed.

Ordered,

That the ſaid Anſwer of Dr. *Henry Sacheverell*, now ſent from the Lords, be read To-morrow Morning.

January 26.

The Anſwer of Dr. *Henry Sacheverell*, ſent from the Lords Yeſterday, was, according to Order, read, and

Ordered,

That the Anſwer of Dr. *Henry Sacheverell*, ſent from the Lords Yeſterday, be referr'd to the Committee who were appointed to draw up Articles of Impeachment, which were exhibited by the Commons to the Lords, againſt Dr. *Henry Sacheverell*, for High Crimes and Miſdemeanours; and that they do conſider thereof, and report their Opinion, what is moſt proper to be done towards the farther Proceedings thereon. And they have Power to ſend for Perſons, Papers, and Records. And they are to meet at ſuch Times and Places as they ſhall think fit.

February 2.

Mr. *Dolben* reported from the Committee, to whom the Anſwer of Dr. *Henry Sacheverell* was referred to conſider of the ſaid Anſwer, and report their Opinion, what is moſt proper to be done towards the farther Proceedings thereon, That they had conſidered the ſame, and that they do find there are contained therein many Things not warranted by the Courſe of Proceedings upon Impeachments, foreign to the Charge, unbecoming a Perſon impeach'd, and plainly deſigned to reflect upon the Honour of the Houſe; and do humbly ſubmit to the Judgment of the Houſe their Opinion, That for avoiding any Imputation of Delay to the Commons, in a Caſe of ſo great Importance, a Replication be forthwith ſent up to the Lords, maintaining the Charge of the Commons; and the Committee have accordingly prepared the ſame, which they had directed him to report to the Houſe; and he read the ſame in his Place, and afterwards delivered the Report in at the Table, where the ſame was read. And the Replication being read a ſecond Time,

Reſolved,

That the ſaid Replication be the Replication of the Commons to the Anſwer of Dr. *Henry Sacheverell*.

Ordered,

That the Replication be Engroſſed.

There were Debates in relation to the engroſſing of the Replication; when the Committee were deſired to ſhew, that there was in Dr. *Sacheverell*'s Anſwer, *not warranted by the Courſe of Proceedings upon Impeachments, foreign to the Charge, unbecoming a Perſon impeach'd, and plainly deſigned to reflect on the Honour of the Houſe*.

The entering into theſe Particulars was declined; for which Reaſon, and becauſe the Anſwer appeared full and ſatisfactory, there was a Diviſion upon engroſſing the Replication; in which the *Yea's* were 182, the *No's* 88.

February 3.

The engroſſed Replication of the Commons to the Anſwer of Dr. *Henry Sacheverell*, was read.

Ordered,

That the ſaid Replication be ſent to the Lords.

Ordered,

That the Original Anſwer be return'd to the Lords.

Ordered,

That Mr. *Dolben* do carry the Original Anſwer of Dr. *Henry Sacheverell*, and the Replication thereunto, to the Lords.

February 4.

A Meſſage from the Lords by Sir *Richard Holford* and Mr. *Gery*, That they were commanded to acquaint the Houſe of Commons, that their Lordſhips have appointed *Thurſday* next, at Seven of the Clock in the Morning, for the Trial of *Henry Sacheverell*, Doctor in Divinity, at the Bar of their Houſe; and that their Lordſhips will take Care, that there will be Conveniencies made there for the Managers of the Houſe, at the Trial, upon the Impeachment againſt him.

Reſolved,

That the Managers be appointed to make good the Articles of Imment againſt Dr. *Henry Sacheverell*.

Ordered,

That the Committee to whom it was referred to draw up the ſaid Articles, be the ſaid Managers.

Reſolved,

That this Houſe will be preſent at the Trial of the Impeachment againſt Dr. *Henry Sacheverell*, as a Committee of the whole Houſe.

Ordered,

That a Meſſage be ſent to the Lords, to acquaint them with the ſaid Reſolution, and to deſire, that a convenient Accommodation may be prepared for them. And,

Ordered,

That Mr. *Bromley* (who moved this Matter) do carry the ſaid Meſſage to the Lords.

The Houſe divided on this Queſtion, *Yea's* 192, *No's* 180.

There was a long Debate upon this Meſſage; in which the ſeveral Precedents of the Caſes of the Earl of *Strafford*, and the Lord Viſcount *Stafford*, were cited, whoſe Trials were in the Court prepared in *Weſtminſter-Hall*: And the Caſe of the *French* Smugglers, impeached 1698, for High Crimes and Miſdemeanours, when there were Conferences, and free Conferences between the Two Houſes, about a convenient Accommodation for the Commons to be preſent at their Trial; which the Lords agreed to, being convinced by the Reaſons of the Commons. It was ſaid, That the firſt regular Trial upon an Impeachment in Parliament, in the preſent Method, was the Trial of the Earl of *Strafford*; and the Commons declared and inſiſted, *they had a Right to be preſent at the Trial as an Houſe, or a Committee of the whole Houſe, as they thought fit; and that they held it neceſſary and fit, that all the Members of the Houſe ſhould be preſent at the Trial, to the End that every one may ſatisfy his own Conſcience, in the giving his Vote to demand Judgment.* In the Caſe of the Lord Viſcount *Stafford*, the like Accommodation was never diſputed; but in that of the Smugglers it was; and the Lords would have diſtinguiſh'd betwixt an Impeachment for High Crimes and Miſdemeanours, and for High Treaſon: Which the Commons anſwered, ſhewing, That the different Nature of thoſe Crimes related only to the Puniſhment, and did not alter and change the Nature of the Court. And by the Strength of this, and other Arguments, which may be ſeen in the Reports of the Conferences, and free Conferences, entered on their Journals, they did, at laſt, prevail.

February 6.

A Meſſage from the Lords by Mr. *Gery* and Mr. *Hiccocks*, That the Lords had commanded them to acquaint the Houſe, that their Lordſhips have ordered the Lords with White Staves, humbly to move Her Majeſty from their Houſe, that She will be pleaſed to give Order for a Place to be prepared in *Weſtminſter-Hall*, for their Lordſhips to proceed upon the Trial of *Henry Sacheverell*, Doctor in Divinity, who now ſtands impeach'd before their Houſe.

February 7.

The Lords received a Meſſage from Her Majeſty, that Her Majeſty would give Order for a Place to be prepared in *Weſtminſter-Hall*, for their Lordſhips to proceed upon the Trial of *Henry Sacheverell*, Doctor in Divinity, who now ſtands impeach'd before their Houſe.

February 8.

A Meſſage from the Lords by Mr. *Medlycot* and Mr. *Fellows*, That they were commanded by the Lords to acquaint the Houſe, that Her Majeſty hath given Order, that a Court be prepared in *Weſtminſter-Hall*, for the Trial of Dr. *Henry Sacheverell*; which will take up ſome Time; and that therefore the Trial cannot be at the Time appointed, but that as ſoon as the Place is prepared, the Houſe ſhall have Notice of the Day of Trial.

February 10.

Ordered,

That the Managers appointed to make good the Articles of Impeachment againſt Dr. *Henry Sacheverell*, have Power to ſend for Perſons, Papers, and Records.

Ordered,

That Mr. *William Borret* be appointed Solicitor to the ſaid Managers, for proſecuting the ſaid Impeachment.

February 15.

Serjeant *Prat*, and Mr. *Raymond*, having declined being Counſel for Dr. *Henry Sacheverell*, the Lords, upon his Petition, aſſign'd him Mr. *Dee*, Mr. *Dod*, and Dr. *Henchman*, for his Counſel; as alſo, Sir *Simon Harcourt*, and Mr. *Phipps*, before allowed by their Lordſhips; and Mr. *Huggins* his Solicitor.

February 18.

The Lords appointed *Monday* come Seven-night for the Trial of Dr. *Henry Sacheverell*.

The Trial, accordingly, began on *Monday* the 27th of *February*, (*Vide* the Trial in Vol. V.) Which Day, and the following Days, a great Concourſe of People attended Dr. *Sacheverell* from his Lodgings at the *Temple*, to *Weſtminſter*, and at his Return, with great Acclamations and Shouts, *&c.*

A Complaint was made in the Houſe of Commons of theſe Riots. And,

March

March 2.

Reſolved,

That an humble Addreſs be preſented to Her Majeſty, That She will be graciouſly pleaſed to take effectual Meaſures to ſuppreſs the preſent Tumults, ſet on foot and fomented by Papiſts, Nonjurors, and other Enemies to Her Majeſty's Title and Government; and to iſſue her Royal Proclamation, promiſing a Reward to ſuch as ſhall diſcover and ſeize thoſe Incendiaries, as have been the Occaſions of the late Tumults and Diſorders.

No Member in the leaſt juſtified theſe Tumults; and all profeſſed a Readineſs to concur in an Addreſs for the ſuppreſſing them; but deſired the Addreſs might be ſo framed, in ſuch general Words, that it might paſs unanimouſly. They excepted to thoſe Words, *Set on foot and fomented by Papiſts, Nonjurors, and other Enemies to Her Majeſty's Title and Government*; becauſe it did not appear, any Papiſts or Nonjurors were concerned in them, and there was no Reaſon to believe they were; but if they would be particular, it was moved *Republicans* might be added; becauſe it was certain, there were ſuch Perſons; and as certain, that, by their Principles, they would lay hold on any Opportunity, and join with any People, to diſturb the Peace and Quiet of the Government; for they hoped to fiſh in troubled Waters.

There was a Debate upon adding that Word; in which, a certain Gentleman argued againſt it, *becauſe it was not to be imagined, they would be for pulling down their own Meeting-Houſes*. A plain Conceſſion, that the *Diſſenters* were *Republicans*; for which his Party blamed him.

The Houſe divided upon the Word *Republicans*, Yea's 114, No's 279.

The ſame Day, Mr. Secretary *Boyle* reported to the Houſe, That he had attended Her Majeſty with their Addreſs: To which Her Majeſty had been pleaſed to give this very gracious Anſwer:

"HER Majeſty is extremely ſenſible of the great Care and Concern of the Houſe of Commons for the publick Peace, upon this Occaſion; and as Her Majeſty has a juſt Reſentment at theſe tumultuous and violent Proceedings, ſo She will take immediate Care for ſuppreſſing them; and will loſe no Time in endeavouring to find out the Authors and Abettors, in order to bring them to Puniſhment: And to that Purpoſe, will cauſe a Proclamation to be publiſhed, according to the Deſire of this Houſe."

Reſolved, Nemine Contradicente,

That the humble Thanks of this Houſe be returned to Her Majeſty, for Her moſt gracious Anſwer to their ſaid Addreſs.

Ordered, Nemine Contradicente,

That a Committee be appointed to draw up an Addreſs upon the ſaid Reſolution.

And a Committee was appointed accordingly.

And they were ordered immediately to withdraw into the Speaker's Chamber, to draw up the ſaid Addreſs.

March 3.

Sir *Thomas Parker* reported the Addreſs, which was as follows:

The humble ADDRESS of the Houſe of Commons to the Queen.

Moſt Gracious Sovereign,

"WE Your Majeſty's moſt dutiful and loyal Subjects, the Commons of *Great-Britain*, in Parliament aſſembled, out of a deep Senſe of the repeated Inſtances of Your Majeſty's unparalleled Goodneſs, beg Leave to return our moſt hearty Thanks for Your moſt gracious Anſwer to our late humble Addreſs, and for your effectual Care in ſuppreſſing thoſe rebellious Tumults, which were ſet on foot, and fomented by Papiſts, Nonjurors, and other Enemies to Your Majeſty's Title and Government, in Defiance of the juſt Proſecution of the Commons againſt Dr. *Henry Sacheverell*.

"And we moſt humbly beſeech Your Majeſty to believe, that as this Proſecution proceeded only from the indiſpenſable Obligation which we, Your faithful Commons, looked upon ourſelves to lie under, not to ſit ſtill and patiently ſee the Juſtice of the late happy Revolution, and the Glory of our late Royal Deliverer reflected upon, Your Majeſty's undoubted Title ſtruck at, Your Adminiſtration, by which ſo many Bleſſings are derived upon us, endeavoured to be rendered odious to the People, and repreſented as deſtructive of the Church and Conſtitution, the preſent Eſtabliſhment and Proteſtant Succeſſion undermined, the Reſolutions of Parliament treated with Contempt, the Governors of the Church, and Your Majeſty, as Supreme, aſperſed and vilified, the Toleration expoſed as wicked, and Sedition inſolently invading the Pulpit.

"So the Maintenance of Your Majeſty's Right, the Safety of Your Perſon, the Quiet of Your Government, the Continuance of our Happineſs under Your excellent Adminiſtration, the Succeſſion in the Proteſtant Line, the Support and Honour of the Church of *England*, as eſtabliſhed by Law, with that Toleration which is by Act of Parliament allowed to Proteſtant Diſſenters, ſhall be our conſtant Care and Concern: And we will, upon all Occaſions, venture all that is dear to us, in Defence of ſuch ineſtimable Bleſſings."

Great Exceptions were taken to the Addreſs; and it was moved, That it might be re-committed, becauſe the Committee had exceeded their Commiſſion, which was only to return Her Majeſty Thanks for Her moſt gracious Anſwer; but they had taken upon them, in this Addreſs, to ſtate the whole Matter of the Impeachment, and to give their Opinions upon it; which was not only irregular, contrary to the Orders of the Houſe, but prejudging a Caſe then depending before another Judicature. And in the laſt Paragraph there was a Promiſe, to venture all that was dear to them, in Defence of the Toleration, as well as of the Church of *England*. This was ſaid to be putting both upon a Level, upon an equal Foot, which as many Gentlemen could not think proper, and never intended, ſo it was not true; for though they ſhould be always willing to maintain the Toleration, yet they would not venture ſo much for that, as for the Church of *England*. But all theſe Exceptions were over-ruled; and tho' the Addreſs was drawn up manifeſtly contrary to the Rules and Order of the Houſe, yet the Majority agreed to it, as it was reported.

The Trial proceeded, and the Lords gave their Votes *ſeriatim*, *Whether Dr.* Henry Sacheverell *was guilty of High Crimes and Miſdemeanours, charged upon him by the Impeachment of the Houſe of Commons?* And a Majority voted him Guilty.

March 21.

Reſolved,

That the Thanks of this Houſe be given to the Members who were appointed the Managers of the Impeachment againſt Dr. *Henry Sacheverell*, for their faithful Management, in the Diſcharge of the Truſt repoſed in them.

And *Mr. Speaker* gave them (they ſtanding up in their Places) the Thanks of the Houſe accordingly.

There was no Precedent pretended for this, beſides the giving the Thanks of the Houſe to the Attorney-General, Sir *Heneage Finch*, (afterwards Lord Chancellor, and Earl of *Nottingham*,) and the Motion was farther ſupported by ſome Encomiums on the Managers Performances. This Matter was oppoſed by ſeveral Gentlemen, who ſhewed a wide Difference betwixt this Caſe and that of my Lord Chancellor *Nottingham*, who had the Thanks of the Houſe for maintaining their Rights and Privileges at a Conference between the Two Houſes, in 1671, concerning the Commons ſole Right of giving Money; which was the more remarkable, becauſe he was, at firſt, of Opinion, That, in the particular Point then in Controverſy, the Commons were in the Wrong. But the Houſe having determined againſt his Opinion, and appointed him to be a Manager at the Conferences, he applied himſelf to the ſearching the Records; and with indefatigable Labour and Study, diſcovered ſuch Precedents, and ſo ſtrenuouſly ſupported the Commons Right, that the Commons thought it proper to make him that honourable Acknowledgement. It was alſo urged, That there were Managers upon former Trials, that had not the Thanks of the Houſe: And though theſe Gentlemen might have done their beſt in the Diſcharge of the Service the Houſe required from them, yet they deſerved not ſuch Diſtinction. Many declared, the Managers did not ſpeak their Senſe, and that they could not approve what they had advanced, particularly, in juſtifying Reſiſtance, and declaring againſt Paſſive Obedience and Non-Reſiſtance, which was the Doctrine of the Goſpel, and of the Church of *England*, and unalterably eſtabliſhed by the Union of the Two Kingdoms; and ſome of them denied the Queen's Hereditary Right, affirming that ſhe had only a Parliamentary Right; and that, as to the Hereditary Right, the Pretender had a much better Title to the Throne. That in theſe Inſtances, they exceeded their Commiſſion, which could not be underſtood to allow them in any thing more, than ſpeaking in Defence of the Reſiſtance at the Revolution, much leſs to meddle with the Queen's Title, which gave Offence to many that heard them.

Another Reaſon againſt giving them Thanks, was, becauſe of their railing and reviling Language to the Doctor, unbecoming any Counſel in a Criminal Proſecution, and much unbecoming Managers of the Houſe of Commons. In which it was hard to ſay, whether they ſhewed more Bitterneſs or Inconſiſtency.

And becauſe of their giving up the Honour of the Houſe, in ſuffering of Mr. *Dolben* to explain himſelf, when the Lords required it: In which Caſe, he ſhould not have complied, without conſulting the Houſe, and taking their Directions.

And one Gentleman ſpoke to this Effect, juſt before the Queſtion; That though he was againſt giving them the Thanks of the Houſe, yet he could not forbear mentioning one Reaſon for it, that had been omitted by others, but was, in his Opinion, ſtronger than any they offered; and that was, becauſe he was ſure they would have Thanks no where elſe.

There was a Diviſion of the Houſe, the Yea's were 175, No's 116; and it was obſervable, that in this Queſtion, all the Managers preſent in the Houſe (except Mr. *Dolben*, whoſe ſingular Modeſty was the more remarkable) voted for their having Thanks.

March 22.

A Meſſage from the Lords by Mr. *Rogers* and Mr. *Hiccocks*, That the Lords had commanded them to acquaint this Houſe, that their Lordſhips are now ready to give Judgment againſt Dr. *Henry Sacheverell*, if this Houſe, with their Speaker, will come and demand the ſame.

Reſolved,

That this Houſe will demand Judgment of the Lords againſt Dr. *Henry Sacheverell*.

Some Gentlemen ſpoke againſt demanding Judgment, laying down theſe Poſitions:

That the Lords could not give Judgment, unleſs the Commons demanded it: and that the Commons were at Liberty, whether they would demand it or not, according to the Reaſon given by the Commons, when they inſiſted to be preſent at the Trial of the Earl of *Strafford*, as a Committee of the whole Houſe, *That they held it fit and neceſſary, that all the Members ſhould be preſent at the Trial, to the End, every one might ſatisfy his own Conſcience, in the giving his Vote to demand Judgment:* And when that Trial was over, no Judgment was demanded. In the preſent Caſe, they were againſt demanding Judgment, becauſe of the Precedent of this Proceeding, which might be very dangerous to innocent Men hereafter; for none could be ſafe, if mere Innuendo's, the moſt forced and ſtrained Conſtructions, and Paſſages miſapplied, ſhould be admitted for Evidence. They thought the Lords had made dangerous Precedents, in taking upon them to declare the Law and Uſage of Parliament, without one Precedent for it, and directly contrary to many; for the Caſe of Dr. *Manwaring* could not be a Precedent, he ſubmitting, and pleading Guilty. The Lords alſo put the Queſtion of *Guilty* upon all the Articles together, which is ſuch a complicated Queſtion, they could not give their Votes freely; and it was ſaid to be a Reaſon, why ſome of them did not vote: And the Lords, who are both Jury and Judges, were not under the Obligation of an Oath, or upon their

Honour. To these Reasons, one other was added, That it would be a great Reflection on this Parliament, to have, in the same Session, one of the Ministers of the Church of *England* suffered to lie in Prison without Relief, upon his Complaint, for reading her Prayers; and to have another punished for preaching her Doctrines.

These Arguments were urged against demanding Judgment, by those Gentlemen that opposed the Prosecution in every Step of it; but some of those that had been forward in it, were now against demanding Judgment, out of great Displeasure and Indignation at the Judgment they heard was to be given; which they called a scandalous, ridiculous Judgment, and a Reflection upon the Proceeding; and therefore they were against demanding Judgment. And it is said, several of those Gentlemen withdrew, and would not vote in this Question. The House divided upon it; the Yea's were 165, No's 117.

March 23.

Then the Commons, with their Speaker, went up to the Bar of the House of Lords, and, by their Speaker, demanded Judgment against Dr. *Henry Sacheverell:* And being returned, *Mr. Speaker* reported, That he had, in the Name of the Knights, Citizens, and Burgesses, in Parliament assembled, and of all the Commons of *Great-Britain*, demanded Judgment of the Lords against Dr. *Henry Sacheverell*, for High Crimes and Misdemeanours, for which he was impeached.

The Judgment was,

That Henry Sacheverell, *Doctor in Divinity, shall be, and is hereby enjoined not to preach during the Term of three Years next ensuing. That Dr.* Henry Sacheverell's *Two printed Sermons, referred to by the Impeachment of the House of Commons, shall be burnt before the* Royal-Exchange, *in* London, *between the Hours of One and Two of the Clock, on the 27th of this Instant* March, *by the Hands of the common Hangman, in the Presence of the Lord-Mayor, and the Two Sheriffs of* London *and* Middlesex.

A LIST of the Lords, *who protested against some Proceedings, in relation to the Case of Dr.* Henry Sacheverell, *in the House of Peers; with their Lordships Reasons for entering their Protestations* *.

Die Martis, 14 *Martii*, 1709.

THE Question was put,

That by the Law and Usage of Parliament in Prosecutions, by Impeachments for High Crimes and Misdemeanours, by Writing or Speaking, the particular Words supposed to be Criminal are not necessary to be expresly specified in such Impeachments.

It was resolved in the Affirmative.

Dissentient,

Buckingham, *Jo. Ebor.* *H. London,* *Hamilton,* *Berkeley* *Stratton* *Northeske* *Dartmouth,* *Tho. Roffen.* *Geo. Bath* and *Wells,* *Mar.* *Haversham.*

1. Because we conceive the Law of the Land is as much the Rule of Judicature in Parliament, as it is in the inferior Courts of Justice; and since, by the Opinion of all the Judges in all Prosecutions, by Information, or Indictment, for Writing or Speaking, the particular Words supposed to be Criminal must be expresly specified in such Information or Indictment; and that this is the Law of the Land, confirmed by constant Practice; we conceive that there is the same Reason and Justice for specifying in Impeachments, the particular Words supposed to be Criminal; for otherwise, a Person who is innocent and safe by the Law, out of Parliament, may, nevertheless, be condemned in Parliament: For we conceive, that some Reasons of Law and Justice, why the Words supposed Criminal must be specified in Informations and Indictments, may be, that the Party accused may certainly know his Charge, and be thereby enabled to defend his Innocence; that the Jury may know it too, and be enabled thereby the better to apply the Evidence given by the Witnesses to the Matter of such Charge; and that the Judges themselves may the better judge of the Nature of the Crime, and of a Punishment adequate to it, which, in Cases of Misdemeanour, which are indefinite and innumerable, must extremely vary, according to the Heinousness of the Offence; and finally, that the House of Lords, upon Complaint to them, may also judge whether the Fine, which is usually one of the Punishments for Misdemeanours, does not exceed the Demerit, especially since by the Bill of Rights, exorbitant Fines are declared to be illegal; which Reasons seem to be fully as strong in the Case of Impeachments, as in Indictments and Informations; for the particular Words are as necessary to enable the Lords to determine uprightly, and impartially, as the Jury or Judges, and as necessary for the Defence of the accused here, as in the Courts below; and if there was to be a Difference, it seems more necessary in this High Court; for the weightier the Prosecution is, the more need has an unfortunate Man of Indulgence, and all lawful Favour; and surely, there cannot be a heavier Load upon any Man, than an Accusation of all the Commons of *Great-Britain*.

2. We do not remember any Precedent insisted on for the Maintenance of this Resolution, save only the Case of Dr. *Manwaring*, which we conceive could not warrant this Resolution. For, 1. The Words charged upon him by the Commons Declaration, were not compared with the Sermons, though it was desired; and consequently, no Lord could say, they were not the Words of the Sermon; and therefore, upon such Uncertainty, we conceive, we could not ground a positive Resolution. 2. The Charge upon him, taken out of his Sermon, on the 4th of *May*, 1628, seems to be the very Words by him spoke; for they were attested by Ear-Witnesses, who surely never were, or could be admitted to attest their own Conjectures of the Scope of a Sermon, and not specify the very words, for that would be to make the Witnesses to be the Judges.

3. Besides, in such a Case as this, where the Party did not insist on any legal and just Exceptions, of which he might have taken Advantage, if he had made his Defence, which he did not, but submitted and begged Pardon; this ought not to be looked upon as a Precedent, or Authority, to justify the Illegality of the Form of that Impeachment.

3. But although this Precedent was full, and expres to the Point resolved, we humbly conceive, That one Precedent is not sufficient to support a Law and Custom of Parliament; nor consequently, a Resolution declaring it; for surely there is a great Difference between a single Instance, and a Law and Custom; especially,

4. Since we conceive, that in all the Precedents, at least all that have appeared to us, for four Hundred Years, of the Prosecutions in Parliament, the particular Words charged as criminal, have been constantly expressed in the Articles, or Declarations of Impeachment.

Exilium Hugonis le de Spencer Patris & Filii. The 1st Article was for making a Bill in writing, the Tenour whereof was particularly set forth. — *Ed.* II.

William de la Pool, 6 *Art.* was for Words spoken by him, sitting in the Council in the Star-Chamber, *viz.* That he said, He had a Place in the Council-House of the *French* King, as he had here; and was as well trusted as he was here, and could remove from the *French* King the privyest Man of his Council, if he would. — 26 *H.* VIII.

Lord *Finch*. The Opinions he delivered are set forth in *hæc Verba*, as also the Times when he delivered them. — 1640. *Art.* 4. 5.

Another Opinion delivered by him in the Exchequer-Chamber, and Western Circuit, is set down in his expres Words. — 7.

Dr. *Cosens*. He is charged with Words, delivered in a Sermon at *Durham*. The Words were these, *The Reformers*, &c. — 1640. *Art.* 11.

Charges him with Words in like Manner. The Words were these, *The King*, &c. — 19.

Judge *Berkley*. The Words charged upon him are expresly mentioned. — 1641. *Art.* 1.

That he subscribed an Opinion, *in hæc Verba*. — 4.

Which are specified. — 5.

The Matter therein charged, though of Record, was copied and delivered with the Articles. — 6.

The Words spoken, and the Place, expresly set forth. — 7, 8.

Judge *Crawley*. For subscribing and giving Opinions, set forth in *hæc Verba*. — 1641. *Art.* 1, 2, 3.

Herbert. For exhibiting Articles against the five Members; which Articles follow, in these Words, &c. — 1641.

Thirteen Bishops impeached for making and promulging, in 1640, *several Constitutions and Canons, contrary to the King's Prerogative*, &c. — 1641.

They demurred, because the Charge was general; but receded from this Demur, because it appeared to be particular.

Earl *Strofford*. Expresses the Words spoken by him, and the Time. — 1641. *Art.* 2.

Expres the very Words spoken by him. — 4, 20, 21, 22.

Is in like Manner, with an Innuendo of his Meaning. — 23, 24, 25, 26, 27.

Archbishop *Laud*. Expres the Words spoken by him. — 1642.

Expresses the Words spoken by him, and the Time and Place. So necessary did the Long Parliament itself think it to pursue the Forms of Law in all their Prosecutions. — *Art.* 1, 4, 10. 2.

Upon the whole, therefore, we conceive, That so great a Number of Precedents is sufficient to out-weigh the single Instance of Dr. *Manwaring*'s Case, how apposite soever it might seem to be to the present Case, which, for the Reasons which we have mentioned, is far from being plain and clear, or having the full Authority of a Precedent: And the Law and Custom of Parliament, as we conceive, is to be determined by constant Course and Practice, and not one Precedent, occasioned by such odious Doctrines as those of Dr. *Manwaring*'s: Nor can the contrary Assertion to the above-said Resolution be of any ill Consequence to Impeachments by the Commons; because it is easy for them to specify the Words which offend them, but extremely difficult for the Accused to defend himself, without knowing them: And as all who are charged criminally have Leave to make their Defence, so they should also have allowed them all lawful Means for it.

Jo. Ebor,	*Nottingham,*	*Northampton,*
Scarsdale,	*N. Duresme,*	*North* and *Grey,*
Anglesey,	*Rochester,*	*Craven,*
Abingdon,	*Scarborough,*	*R. Ferrers,*
Weymouth,	*W. Cestrienf.*	*Beaufort,*
Conway,	*Osborne,*	*Yarmouth,*
Willougby, Br.	*Guernsey,*	*Berkshire,*
Guilford,	*Lempster,*	*Jersey,*
H. London,	*Thanet,*	*Stawell,*
Leeds,	*Denbigh,*	*Howard,*
Sussex,	*Plymouth*	

Die Jovis, 16 *Martii*, 1709.

The Order of the 14th Instant being read, for taking into Consideration the Impeachment of Dr. *Henry Sacheverell*, Article by Article:

And it being moved to declare, that the Commons had made good the first Article against Dr. *Henry Sacheverell*;

After a long Debate thereupon,

This Question was proposed;

That the Commons have made good their first Article of Impeachment against Henry Sacheverell, *Doctor in Divinity.*

And a further Debate thereupon,

This Question was put;

Whether this Question shall be now put?

It was resolved in the Affirmative,

* These are omitted in the Trial, and should be read after Page 836. Vol. V.

Diſſentient,

Becauſe we humbly conceive, there are no Reflexions therein contained on the Memory of the late King *William*, nor the Revolution; and that there is no Offence charged therein upon Dr. *Sacheverell*, againſt any known Law of the Land.

Jo. Ebor, *Wemys,* *Suffolk,* *Shrewſbury,* *Poulett,* *Beaufort,* *Denbigh,* *Stawell,* *Yarmouth,* *R. Ferrers,* *N. Dureſme,* *Scarſdale,* *Howard,* *Berkley, Str.* *Say* and *Sele,* *W. Ceſtrienſ.* *Willoughby, Br.* *Ormond,* *Angleſea,* *Rocheſter,* *Buckingham,* *Craven,* *Weymouth,* *Suſſex,* *Lexington,* *Oſborne,* *Northeſk,* *Tho. Roffen,* *Northampton,* *Mar,* *Leigh,* *Weſton,* *Chandos,* *Guernſey,* *Hamilton,* *Berkſhire,* *Thanet,* *Scarborough,* *Nottingham,* *North* and *Grey,* *Conway,* *Leominſter,* *Abingdon,* *Geo. Bath* and *Wells,* *Plymouth,* *Guilford,* *H. London,* *Dartmouth,* *Haverſham,* *Leeds.*

Then the main Queſtion was put;

That the Commons have made good their firſt Article of Impeachment againſt Henry Sacheverell, *Doctor in Divinity.*

It was reſolved in the Affirmative.

Diſſentient,

Buckingham, *Shrewſbury,* *Dartmouth,* *Guilford,* *N. Dureſme,* *Willoughby, Br.* *Haverſham,* *Northeſk,* *Mar.*

Becauſe by the Laws of the Land, the Laws of Parliament, and the inherent Right of Peerage, every Peer is to judge for himſelf, both of the Fact, as well as of the Law, and cannot be precluded by any Majority; which indeed muſt determine the Caſe in reſpect of the Criminal; but never did nor can preclude any Lord from voting the Party accuſed Guilty or Not Guilty of the Fact, as well as of the Crime of ſuch Fact.

Suſſex, *Northampton,* *Yarmouth,* *Scarborough,* *W. Ceſtrienſ.* *North* and *Grey,* *Thanet,* *Denbigh,* *Weymouth,* *Stawell,* *Conway,* *Howard,* *Geo. Bath* and *Wells,* *Guernſey,* *Craven,* *Leeds,* *Beaufort,* *Scarſdale,* *Rocheſter,* *Jerſey,* *R. Ferrers,* *Plymouth,* *Oſborne,* *Leigh,* *Abingdon,* *Aſhburnham.*

To the Queſtions upon the ſecond, third, and fourth Articles, we diſſent, for the ſame Reaſon as is given againſt the Queſtion upon the firſt.

Buckingham, *Berkſhire,* *Nottingham,* *Rocheſter,* *Weymouth,* *Howard,* *H. London,* *Haverſham,* *Ormond,* *Willoughby, Br.* *Guernſey,* *Jo. Ebor,* *N. Dureſme,* *Hamilton,* *Suſſex,* *Scarſdale,* *Stawell,* *Poulett,* *Abingdon,* *Conway,* *Oſborne,* *Weſton,* *Guilford,* *Lexington,* *W. Ceſtrienſ.* *Geo. Bath* and *Wells,* *Beaufort,* *Denbigh,* *Yarmouth,* *Jerſey,* *Thanet,* *Plymouth,* *Northampton,* *Leigh,* *Angleſea,* *Craven,* *Dartmouth,* *Tho. Roffen.*

Die Sabbati, 18 *Martii,* 1709.

It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the Queſtion to be put to each Lord in *Weſtminſter-Hall* ſhall be,

Is Henry Sacheverell, *Doctor in Divinity, guilty of High Crimes and Miſdemeanours, charged on him by the Impeachment of the Houſe of Commons?* And the Anſwer thereunto ſhall be, *Guilty*, or *Not Guilty*, only.

Diſſentient,

Buckingham, *Hamilton,* *Mar,* *Lexington,* *Dartmouth,* *North ſk,* *Jo. Ebor,* *W. Ceſtrienſ.* *Tho. Roffen,* *N. Dureſme,* *hrewſhury.*

1. Becauſe we do humbly conceive, that the obliging every Lord to anſwer generally, *Guilty*, or *Not Guilty*, to a Queſtion containing all the Articles of this Impeachment, is a Kind of tacking upon ourſelves, by an unneceſſary joining of Matters of a different Nature, and ſubjecting them to one and the ſame Determination; and conſequently may prejudice the Right every Peer has to give a free Affirmative, or Negative; ſince whoever thinks Dr. *Sacheverell* guilty of one Part, and innocent of the other, will be obliged either to approve what he condemns, or condemn what he approves.

2. We do humbly conceive, there is at leaſt a Poſſibility, that though a Majority of the Houſe, if admitted to vote to the Articles ſeparately, may think him innocent upon each Article; yet, by this Method of a general Anſwer, he may be condemned of all; which ſeems not to be conſiſtent with the uſual Method of Juſtice in this Houſe.

3. We do humbly conceive, that ſince the Judgment of the Houſe in this Caſe ought to be a Declaration of the Law, the Condition of the People will be moſt miſerable, to have Puniſhment inflicted for High Crimes and Miſdemeanours, and not to have a Poſſibility of informing themſelves what the High Crimes and Miſdemeanours thereby puniſhed are; for the People's only Guide is the Law; and they can never be guided by what they can never be informed of: And we do humbly conceive, that this Uncertainty being in the Caſe of a Clergyman, for preaching, it may poſſibly create ſome Fear in good Men, when they preach ſome Doctrines of the Church of *England*, particularly that of Non-Reſiſtance; and may be made uſe of by ill ones, as an Excuſe for the Neglect of that Duty, which, upon ſome Occaſions, is required of them, even by the Laws of the Land.

Ormond, *Scarſdale,* *Denbigh,* *Leeds,* *Nottingham,* *Stawell,* *Weymouth,* *Craven,* *Oſborne,* *Willoughby, Br.* *Haverſham,* *Geo. Bath* and *Wells,* *Beaufort,* *Angleſea,* *Northampton,* *Leominſter,* *H. London,* *R. Ferrers,* *Poulett,* *Howard,* *Plymouth,* *Guilford,* *Leigh,* *Berkſhire,* *Thanet,* *Yarmouth,* *Rocheſter,* *Suſſex,* *North* and *Grey,* *Abingdon,* *Jerſey,* *Conway,* *Weſton,* *Guernſey.*

Die Lunæ, 20 *Martii,* 1709.

The Houſe, purſuant to the Orders of *Saturday* laſt, adjourned into *Weſtminſter-Hall.*

And being there, the Houſe was reſumed, and the Lord Chancellor declared, That the Lords had agreed upon a Queſtion to be put to each Lord ſeverally.

Then his Lordſhip put the Queſtion, beginning at the Junior Baron firſt, as follows:

Is Dr. Henry Sacheverell *guilty of High Crimes and Miſdemeanours, charged upon him by the Impeachment of the Houſe of Commons?*

And having aſked every Lord preſent, and they having declared, *Guilty*, or, *Not Guilty*, his Lordſhip having caſt up the Votes, declared him Guilty.

Diſſentient,

Suſſex, *Thanet,* *Nottingham,* *Craven,* *Northeſk,* *North* and *Grey,* *Leigh,* *Jerſey,* *Hamilton,* *Beaufort,* *Weſton,* *Ormond,* *Berkſhire,* *N. Dureſme,* *Shrewſbury,* *Scarborough,* *Leeds,* *Yarmouth,* *Jo. Ebor,* *Leominſter,* *Northampton,* *Willoughby, Br.* *Abingdon,* *Poulett,* *H. London,* *Guernſey,* *Geo. Bath* and *Wells,* *Say* and *Sele,* *Oſborne,* *Plymouth,* *Chandos,* *W. Ceſtrienſ.* *Buckingham,* *Rocheſter,* *Mar,* *Weymouth,* *Guilford,* *Conway,* *Angleſea,* *Scarſdale,* *Dartmouth,* *Denbigh,* *Howard,* *Tho. Roffen,* *Berkley, Str.* *Stawell,* *Lexington.*

Die Martis, 21 *Martii,* 1709.

Ordered,

That the Judgment to be paſſed in the Caſe of Dr. *Henry Sacheverell* ſhall be,

That he be enjoined not to preach during the Term of three Years next enſuing: That his two printed Sermons, referred to by the Impeachment of the Houſe of Commons, ſhall be burnt before the Royal Exchange *in* London, *between the Hours of and , on the Day of , by the Hands of the common Hangman, in the Preſence of the Lord Mayor, and the two Sheriffs of* London *and* Middleſex.

Diſſentient,

Jo. Ebor, *Scarſdale,* *Northampton,* *Craven,* *Howard,* *North* and *Grey,* *Scarborough,* *N. Dureſme,* *Weymouth,* *Geo. Bath* and *Wells,* *Guilford,* *Buckingham,* *Berkſhire,* *Abingdon,* *Conway,* *Yarmouth,* *H. London,* *Plymouth,* *Tho. Roffen,* *Guernſey,* *Leominſter,* *Denbigh,* *Nottingham,* *Thanet,* *Oſborne,* *Beaufort,* *Angleſea,* *Suſſex,* *R. Ferrers,* *Leigh,* *Poulett,* *Aſhburnham.*

NUMBER

NUMBER XXXVII.

The following Addreſs, and Opinions, being authentick, are, it is conceived, of Importance enough to give them a Place in this Collection. The Addreſs was preſented by the Lord Biſhop of Litchfield *and* Coventry, *and the Lord Biſhop of* Ely, April 17, 1711, 10 Annæ.

To the Queen's moſt Excellent Majeſty,

The humble ADDRESS of the Archbiſhop and Biſhops of the Province of Canterbury, *in Convocation aſſembled.*

May it pleaſe Your Majeſty,

WHEREAS one *William Whiſton*, a Preſbyter of the Church of *England*, and late Profeſſor of Mathematicks in the Univerſity of *Cambridge*, who was, in *October* laſt, expell'd the ſaid Univerſity, for aſſerting and ſpreading Abroad divers Tenets, contrary to Religion received and eſtabliſhed by publick Authority in this Realm, has ſince that Time, and a little before the ſitting of this preſent Convocation, printed and publiſhed an *Hiſtorical Preface* to other Writings of the ſame pernicious Deſign, intended for the Preſs, in which he has advanced ſeveral *damnable* and *blaſphemous Aſſertions* againſt the Doctrine and Worſhip of the Ever-Bleſſed Trinity: Expreſly contradicting the Two Fundamental Articles of the *Nicene* Creed; and defaming the whole *Athanaſian*; and has had the Confidence to inſcribe and direct the ſaid printed Preface to the Convocation now Aſſembled:

And whereas we take ourſelves to be both bound in Duty to God, and to his Holy Truths, and in Obedience to Your Majeſty's pious Intentions ſignified to us with Your Gracious Licence, to repreſs the ſaid *Blaſphemy*: and alſo obliged in Vindication of our firm Adherence to the true Faith, and for the Preſervation of the ſame in the Members of our Communion, to call the ſaid *William Whiſton* before us, in order either to his Amendment, or Excluſion from the Communion of the Church of *England*; but do yet find ourſelves hindered from going on, by ſome Doubts ariſing among ourſelves concerning our Power ſo to act and proceed:

For that the Court of Convocation being Final, or the laſt Reſort, from which no Appeal is provided by the Statute made in the 25th Year of *Henry* the Eighth, *Chap.* 19. it may ſeem to be doubtful how far a Proſecution, without Appeal to the Crown, will be conſiſtent with the Statute made in the firſt Year of Queen *Elizabeth*, *Chap.* 1. *Sect.* 17. whereby all Juriſdiction, and particularly for Reformation of Errors, Hereſies, and Schiſms, is united and annex'd to the Imperial Crown of this Realm; and alſo how far it will be conſiſtent with the Statute of Appeals, made in the 25th Year of *Henry* VIII. *Chap.* 19. which, in the Courſe of the Appeals directed to be henceforth made, doth not mention Convocation. May it pleaſe Your moſt gracious Majeſty, out of Your known Zeal for the Honour of God, and the Good of his Church, to lay this Caſe before Your Reverend Judges, and others whom Your Majeſty in Your Wiſdom ſhall think fit, for their Opinion, How far the Convocation, as the Law now ſtands, may proceed in Examining, Cenſuring, and Condemning ſuch Tenets as are declared to be Hereſy by the Laws of this Realm; together with the Authors and Maintainers of them.

[*Upon this Addreſs to the Queen, Her Majeſty was pleaſed to refer the whole to the Twelve Judges, and to her Attorney and Solicitor-General; who being ſeveral Times aſſembled together, and debating the Matter, came to the following Reſolutions.*]

To the Queen's moſt Excellent Majeſty.

May it pleaſe Your Majeſty,

IN humble Obedience to Your Majeſty's Royal Command, ſignified to Your Judges by the Right Honourable the Lord-Keeper; We whoſe Names are ſubſcribed have conſidered the Queſtions mentioned in the Addreſs hereunto annexed, and are humbly of Opinion, That ſince the Statute of 23d of *Henry* VIII. againſt Citing out of the Dioceſe, and thoſe Statutes of the 24th and 25th Years of the ſame Reign, touching Appeals, and as the Law now ſtands, the Convocation hath not any Juriſdiction originally to cite before them any Perſon for Hereſy, or any other Spiritual Offence, which according to the Laws of the Realm may be cited, cenſured, and puniſhed in the reſpective Eccleſiaſtical Courts or Juriſdictions of the Archbiſhops, Biſhops, and other Ordinaries; who, we conceive, have the proper Judicature in thoſe Caſes; and from whom and whoſe Courts the Parties accuſed may have their Appeals; the laſt Reſort wherein is lodged in the Crown. In which Statute for Citing out of the Dioceſe, and in the others, as far as relates to Appeals for ſuch Offences, no Notice is taken of the Convocation, either as to Juriſdiction, or Appeals. Nor doth it any way appear to us in whom the pretended judiciary Power of a Convocation, either before or ſince the ſaid Statutes, (if any ſuch they ever had) reſided; whether in the whole Body of the Convocation, or in Part. But it is plain by the firſt Statute, That the Archbiſhop's Juriſdiction, even in Caſe of Hereſy, is bounded ſo that he cannot proceed againſt ſuch Offenders within any other Dioceſe than his own, without the Conſent, or in the Default of the Dioceſan Biſhops. All which Statutes being made for the Eaſe and Benefit of the Subjects, they cannot, as we humbly conceive, be deprived of the Benefit of them by any Pretence of Juriſdiction in the Convocation; from which we cannot find or be inform'd of any Inſtance of Appeal. Nor have any Judicial Precedents or Authorities for Convening or Cenſuring of ſuch Offenders in any Convocation ſince thoſe Statutes, or the Reformation (which is now near 180 Years), appear'd unto us. And if ſuch Power ſhould be allow'd to the Convocation, we conceive it would invade the ordinary Juriſdiction of the Archbiſhops and Biſhops; which we conceive are preſerved by the Act of Parliament made in the 17th Year of the Reign of his late Majeſty King *Charles* the Firſt, *Chap.* 11. and by another made in the 13th Year of King *Charles* the Second, *Chap.* 12. and by the Act made the 29th *Car.* II. *Chap.* 9. which took away the Writ *De Heretico Comburendo*; in none of which any Mention is made of the Convocation. And by the *Bill of Rights*, 1 Will. & Mar. it is enacted, That the Commiſſion for erecting the late Court of Commiſſion for Eccleſiaſtical Cauſes, and all other Commiſſions and Courts of like Nature, are illegal and pernicious. But we conceive that Heretical Tenets and Opinions may be examined and condemn'd in Convocation, authorized by Royal Licence, without convening the Authors or Maintainers of them. All which we moſt humbly ſubmit to Your Royal Majeſty's Great Wiſdom.

May 5*th*, 1711. *Edw. Ward*, *Jo. Blencowe*, *Robert Dormer*, *S. Lovell.*

The other Paper here follows.

May it pleaſe Your Majeſty,

IN Obedience to Your Majeſty's Commands, ſignified to us by the Right Honourable the Lord-Keeper of the Great Seal, in relation to the Humble Addreſs of the Archbiſhop and Biſhops of the Province of *Canterbury*, in Convocation aſſembled, hereunto annex'd; We whoſe Names are hereunto ſubſcribed, have taken into Conſideration the Doubts and Queſtions therein ſtated.

And after Conference with the reſt of the Judges, We are humbly of Opinion, that of Common Right there lies an Appeal from all Eccleſiaſtical Courts in *England* to Your Majeſty, in virtue of Your Supremacy in Eccleſiaſtical Affairs, whether the ſame be given by expreſs Words of any Act of Parliament, or not: And that no Act of Parliament has taken the ſame away. And conſequently, that a Proſecution in Convocation, not excluding an Appeal to Your Majeſty, is not inconſiſtent with the Statute of 1 *Eliz.* *Chap.* 1. but reſerves the Supremacy entire.

As to the Queſtion propoſed in the ſaid Addreſs, How far the Convocation, as the Law now ſtands, may proceed in Examining, Cenſuring, and Condemning ſuch Tenets as are declared to be Hereſy by the Laws of this Realm, together with the Authors and Maintainers of them, we underſtand it to import only theſe two things: Whether a Juriſdiction to Examine, Cenſure, and Condemn ſuch Tenets, and the Authors and Maintainers thereof, could ever be exerciſed in Convocation? And if it could, Whether it be taken away by any Act of Parliament?

And We humbly lay before Your Majeſty, That all our Law-Books that ſpeak of this Subject, mentioning a Juriſdiction in Matters of Hereſy, and Condemnation of Hereticks, as proper to be exerciſed in Convocation, both before and ſince the Acts of Parliament mention'd in the Addreſs; and none of them, that we find, making any Doubt thereof; and we obſerve nothing in thoſe, or any other Acts of Parliament, that we think has taken it away; We are humbly of Opinion, That ſuch Juriſdiction, as the Law now ſtands, may be exerciſed in Convocation.

But this being a Matter which, upon Application for a Prohibition, on behalf of the Perſons who ſhall be proſecuted, may come in Judgment before ſuch of us as have the Honour to ſerve Your Majeſty in Places of Judicature; we deſire to be underſtood to give our preſent thoughts with a Reſerve of an entire Freedom of altering our Opinions, in caſe any Records, or Proceedings, which we are now Strangers to, ſhall be laid before us, or any new Conſiderations which have not occurred to us, be ſuggeſted by the Parties, or their Counſel, to convince us of our Miſtake.

T. Parker, *L. Powys*, *Ro. Price*, *E. Northey*, *T. Trevor*, *T. Bury*, *R. Eyre*, *Ro. Raymond*, *J. Powel*, *R. Tracy.*

NUMBER

NUMBER XXXVIII.

A Declaration, ſigned by ARCHIBALD HUTCHESON, *Eſq. and given to ſeveral of his Acquaintance, ſoon after he had peruſed the Examination of* CHRISTOPHER LAYER, *in the Appendix to the Report of the Secret Committee; in which* LAYER *has made Mention of his Name, as one of* Burford's *Club, which the ſaid* LAYER, *in his Examination, ſaith, he was told by one* PLUNKET **.*

March 4, 1722-3.

HAVING read Part of the Examination of *Layer*, of the 19th of *January*, and 4th of *February* laſt, in the Appendix to the Report of the Secret Committee; in which *Layer* is mentioned to have ſaid, that one *Plunket* told him, as explaining what was meant by *Burford*'s *Club*, That Lord *Orrery* was Chairman, and that this Club met monthly, at one another's Houſes, as *Layer* thought; and that *Plunket* told him, That there were eight other Lords, and ſix Commoners (whoſe Names he mentions, and mine as one of them), of that Club: I do hereby declare, upon the Honour of a Gentleman, That I do not know, or believe, that there was a Club, or Meeting, of any of the Lords or Gentlemen mentioned in the ſaid Examination; nor have I ever heard of any Meeting where Lord *Orrery* was preſent, except that which was carried on in the two laſt Seſſions of Parliament, when Lord *Orrery*, and ſeveral Lords and Gentlemen (not mentioned in *Layer*'s Examination), met weekly, and I believe, with great Innocence, dined at one another's Houſes. And I do further affirm, That even on accidental Viſits, I have ſeldom met together any two of the Lords and Commoners ſo mentioned in *Layer*'s Examination: That there are two of theſe Commoners (Sir *Henry Goring*, and Mr. *Dawkins*), whoſe Faces I do not know; and two others (General *Webb*, and Sir *Conſtantine Phipps*), between whom and me there has not been, for fifteen Years laſt paſt, the Intercourſe even of ceremonial Viſits; and between me and the fifth Commoner (Mr. *Shippen*), but very ſeldom: That there are three of thoſe Lords, (*Scarſdale*, *Craven*, *Gower*,) with whom I have very little Acquaintance; a fourth, (Lord *Bingley*) whom I have never met any where, but in Viſits to others, or in publick Places; and a fifth, (the Biſhop of *Rocheſter*) in whoſe Company I have been but twice in three Year's Time. I mention this, to ſhew the notorious Falſhood of *Layer*'s Hear-ſay Evidence of *Burford*'s *Club*; an Appellation I never heard of, till ſome Time after the Appointment of the Secret Committee.

ARCH. HUTCHESON.

The Declaration of William *Earl* Cowper; *ſhewing, That the Matters contained in ſome* Hear-ſays, *relating to him, in the Examinations of* Chriſtopher Layer, *are falſe and groundleſs.*

March 20, 1722-3.

THOUGH Hear-ſay does not affect any one, either in Law or Reaſon, yet it deſerves Contradiction, where the Truth will bear it, eſpecially if printed: And therefore, finding that *Layer*, in his Examinations of the 19th of *Jan.* and 4th of *Feb.* laſt, hath ſaid, That one *Plunket* told him (as explaining what was meant by *Burford*'s *Club*), That Lord *Orrery* was Chairman; and that Lord *Cowper*, and ſeven other Lords, and ſix Commoners named, were of that Club; and that this Club met monthly, as he, *Layer*, thought, at one another's Houſes; and not doubting but my Averment will be believed before any Hear-ſay, eſpecially from one in *Layer*'s ſad Circumſtances: I do hereby declare and affirm upon my Honour, That I do not know, or believe, and never heard, before the ſaid Examinations were talked of, that there was any ſuch Club, or Meeting: That as to three of the Commoners named, *viz.* Sir *Henry Goring*, Mr. *Dawkins*, and Mr. *Shippen*, I do not know them ſo much as by Sight; and as for two of the remaining three Commoners, *viz.* Sir *Conſtantine Phipps*, and General *Webb*, I have not been in their, or either of their Companies, at any Time within ſixteen Years laſt paſt: And as to the Lords, I never met them, or any of them, but either accidentally on Viſits of Ceremony, or in the Time of Parliament, and that with other Lords, on the Buſineſs of Parliament only: And as for one of the ſaid Commoners, whom I am acquainted with, *viz.* Mr. *Hutcheſon*, I never once was at any Meeting with him together with any of the ſaid Lords or Commoners. And whereas *Layer*, in his Examination of the 19th of *September* laſt, ſaid, That Lord *Orrery* told him, that Lord *Cowper* told him (Lord *Orrery*), that 200 Tories, and 90 Grumbletonians, would try their laſt Effort in the Houſe of Commons: And in another Examination, of the 21ſt Day of the ſame Month, *Layer* repeats the ſame, except that he uſeth the Words, *Angry Whigs*, inſtead of the Word *Grumbletonians:* I do hereby declare and affirm upon my Honour, That I never ſaid ſo to Lord *Orrery*, nor to that Effect, nor any Thing like it: And I do therefore verily believe, That Lord *Orrery* never ſaid that I did.

COWPER.

NUMBER XXXIX.

Upon the Trial of a PEER †.

THERE is to be a Commiſſion under the Great Seal, conſtituting a Lord High-Steward for that Occaſion.

If the Great Seal be then in Commiſſion, a Speaker of the Houſe of Peers is to be appointed by ſpecial Commiſſion.

The King's Writ of *Certiorari* is to be directed to the Commiſſioners of *Oyer* and *Terminer*, for *Middleſex*, to remove the Indictment found before them againſt the Priſoner.

The Return whereof, with the Record of the Indictment, is to mention the Time of the Inqueſt of the Grand Jury, and when the Fact was committed.

A Precept is to be directed to the chief Governor of the Tower, to bring his Priſoner to the Court.

If the Trial be by ſpecial Commiſſion, a Sheriff is to be appointed to ſummon the Lords the Tryers, and to do other Services, who is to have a white Wand.

The Lord Chamberlain of the Houſhold (or, in his Abſence, the Vice-Chamberlain), is to know when his Majeſty will be attended for receiving the Lord High-Steward's Staff, and delivering it to the Officers, who are to preſent it to the High-Steward; and is to give Notice thereof to Garter King of Arms, and to the Uſher of the Black-Rod.

Upon this Notice, the Black-Rod is to provide a White Staff, eight or nine Foot long, and he and Garter are to attend with it at the King's Bedchamber, or where his Majeſty appoints, and to deliver it to the Lord Chamberlain, who is to preſent it to the King on his Knee; and Garter, and the Black-Rod in the Bedchamber, or at the Place appointed, are to receive it jointly from the King, on their Knee, with his Majeſty's Directions to whom it is to be delivered.

Hereupon, Garter and Black-Rod are to wait upon the Lord High-Steward, and to give him an Account thereof, and to know when he will pleaſe to be attended to the Trial.

On the Morning of the Trial, at the Hour appointed by the Lord High-Steward, the Judges in their Scarlet Robes, (unleſs in Time of Mourning) together with Garter, and the Black-Rod, and the Serjeant at Arms, who is to make the Proclamations, are to aſſemble at the Lord High-Steward's Houſe, and are to wait on him above Stairs, or where he pleaſes to receive them, Garter being in his Coat of Arms, the Black-Rod having the White-Staff, and the Serjeant at Arms bearing his Mace, where they all have a Collation.

The Lord High-Steward is to be called His Grace upon this Occaſion, during the Trial.

After a ſhort Stay, His Grace the Lord High-Steward comes down to his Coach thus:

His Grace's Gentlemen, Two and Two, bare-headed.

His Serjeant at Arms, and Seal-Bearer (if the Lord High-Steward be Lord-Chancellor, or Lord-Keeper), both bare-headed, one with the Mace, the other with the Purſe.

The Black-Rod with the Lord High-Steward's Staff, and Garter King of Arms on his right Hand, both bare-headed.

Then his Grace the Lord High-Steward, in his uſual Habit (unleſs he be Lord-Chancellor or Lord-Keeper, and then in his rich Gown, his Train borne), followed by the Chief-Juſtices and Judges.

His Grace's Gentlemen, to the Number of Eight, Twelve, or Sixteen, as his Grace pleaſes, firſt take their Coaches without the Gate, four in a Coach, each Coach having two Horſes only.

Then the Lord High-Steward takes his Coach with ſix Horſes, within the Court, at the Foot of the Stairs, ſeating himſelf on the hinder Seat of the Coach ſingly; Garter (and the Seal-Bearer), ſitting over-againſt his Grace bare-headed, the Black-Rod in the right Hand Boot of the Coach, with his Grace's White Staff, and his Grace's Serjeant at Arms in the left Boot, with his Mace.

The Judges take their Coaches without the Gate, and follow his Grace.

When the Trial is by ſpecial Commiſſion, a Meſſenger is to be ſent a little before, to acquaint the Lords the Tryers, (who are to aſſemble in, or near the Houſe of Peers, or in the Exchequer Chamber) that his Grace is coming, in order to their taking their Seats in the Court beforehand, and then his Grace goes directly to *Weſtminſter-Hall*, by the Way of the *New Palace-Yard*.

* Theſe Declarations of Mr. *Hutcheſon*, and Lord *Cowper*'s, ſhould be read after the Examinations of *Layer*, in Vol. VI. and after the Appendix to the Report relating to that Plot. People are left to make their own Obſervations on *Layer*'s Hear-ſay Evidence.

† Mr. *Gregory King*, *Lancaſter* Herald having wrote the Method of Proceedings upon the Trial of a Peer, we thought it not improper to give it a Place here, no ſuch Account being publiſhed in the State Trials.

But if the Trial be in Parliament, they paſs to the *Old Palace-Yard*, and ſo up the Stairs, towards the Houſe of Peers, in this Order.

Firſt, His Grace's Gentlemen, Two and Two.

Then eight Serjeants at Arms, Two and Two: Theſe are to wait His Grace's Arrival at the Bottom of the Stairs.

Then His Grace's Serjeant and Seal-Bearer.

Then the Black Rod and Garter.

Then the Lord High Steward, follow'd by the Chief Juſtices and Judges.

Paſſing through the Painted Chamber, at the Upper End thereof, the Lord High Steward's Gentlemen make a Lane for his Grace, and the reſt of the Proceeding to paſs through. The Serjeants at Arms (all but His Grace's Serjeant) ſtay in the Lobby between the Painted Chamber and Houſe of Lords, and beyond them Garter on the Right Hand, and the Black Rod with the White Staff on the Left.

The Peers are to be in their Robes, and His Grace coming into the Houſe, (and the Mace being depoſited on the uppermoſt Woolſack), paſſes on to my Lord Chancellor's Room, or to His Grace's Chamber; where, if the High Steward be not Lord Chancellor, or Lord Keeper, His Grace puts on his Parliament Robes.

Having repoſed a while, His Grace comes into the Houſe again, and Prayers begin, after which, if the Lord High Steward have a Special Commiſſion to be Speaker, it is to be read, and He is to take the Woolſack.

Then the Peers are to be called over by one of the Clerks Aſſiſtant, and Notice to be taken of all that are preſent; and then the Houſe adjourning to *Weſtminſter-Hall*, Garter, by his Grace's Command, ſummons forth the Peers preſent, one of the Clerks Aſſiſtant having marked a Liſt of them, for Garter to call them over by. And the Proceeding to *Weſtminſter-Hall* is in this manner.

His Grace the Lord High Steward's Gentlemen Attendants, Two and Two.

The Clerks Aſſiſtant to the Houſe of Lords, and Clerk of the Parliament.

Two Clerks of the Crown in the King's Bench, and Chancery, if there.

The Maſters in Chancery.

The Attorney General, if there.

The Judges, and Chief Juſtices.

Peers Eldeſt Sons, and Peers Minors.

Four Serjeants at Arms, with their Maces, Two and Two.

The Yeoman Uſher of the Houſe of Peers.

The Lords Spiritual and Temporal, according to their Degrees and Precedencies, Two and Two. The youngeſt Barons firſt, all covered.

Four Serjeants at Arms more, with their Maces, Two and Two.

His Grace's Serjeant at Arms, and Seal-Bearer.

The Black Rod, with His Grace's White Staff, and Garter King of Arms, in his Coat of Arms, on the Right.

The Lord High Steward of *England* alone, covered.

His Royal Highneſs the Prince of WALES, if preſent.

Thus they paſs through the Painted Chamber, Court of Requeſts, and Part of the Court of Wards, through a Door between the Court of Chancery and King's Bench, into the Court in *Weſtminſter-Hall*, where the Peers go to their Seats as in the Houſe of Lords.

The Lord Steward's Gentlemen go to the further Side of the Throne, on the Left Hand.

The Noblemen's Eldeſt Sons, and Peers Minors, ſtand on the Right Side the Lord High Steward's Chair.

The Clerk of the Parliament, and Clerks Aſſiſtant, go to their Table.

The Black Rod and Garter come before the Throne, make their Obeiſance, and ſtand by, whilſt the Lord High Steward does the like; whence His Grace, attended by all the Serjeants at Arms, and the Black Rod and Garter having ſaluted the Peers, repairs to the Woolſack, and His Grace's Serjeant at Arms goes to the End of the Clerk's Table.

His Grace taking his Place on the Woolſack, as Speaker of the Houſe of Peers, the Lords being ſeated on their Benches, and the Judges and Maſters in Chancery below on their Seats, Garter and the Seal-Bearer ſtand on His Grace's Right Hand, and the Black Rod on the Left, and the Eight Serjeants at Arms ſtand on each Side more behind.

The Two Clerks of the Crown are to be ready at the Clerk's Table, and to ſtand before it; and the Clerk of the Crown in Chancery, having the King's Commiſſion to His Grace in his Hand, they both make three Reverences to His Grace, and at the third Reverence coming up before the Woolſack, they both kneel down, and the Clerk of the Crown in Chancery, on his Knee, preſents the Commiſſion to His Grace, who delivers it to the Clerk of the Crown of the King's Bench, and they with three Reverences returning to the Clerk's Table, the Clerk of the Crown in the King's Bench, directs His Grace's Serjeant at Arms *(after thrice crying, O Yes)* to make Proclamation of Silence, which he is to do with his Mace on his Shoulder; the ſaid Clerk of the Crown of the King's Bench, dictating the Proclamation to the Serjeant, and then opening the Commiſſion, reads it.

His Grace, and the Lords, ſtand up uncovered, whilſt the Commiſſion is reading, which His Grace is to mind the Lords that they do.

The Commiſſion being read, and His Grace bowing, and ſitting down again, Garter, and the Black Rod, with three Reverences jointly, preſent the White Staff on their Knees to His Grace; and thereupon being fully inveſted in his Office, His Grace, with the White Staff in his Hand, removes from the Woolſack to his Chair, placed for him on an Aſcent before the uppermoſt Step of the Throne, or State, attended by Garter, the Black Rod, and the Serjeants at Arms, and there ſits down, the Seal-Bearer laying the Purſe on a Stool on the Left.

Then Proclamation is to be made for all Perſons but the Peers to be uncovered.

Then the King's Writ of *Certiorari* to remove the Indictment, with the Return thereof, and the Record of the Indictment, is to be read by the Clerk of the Crown in the King's Bench.

Then the ſaid Clerk of the Crown directs the Serjeant at Arms to make Proclamation for the Chief Governor of the Tower of *London* to return the Precept to him directed, with the Body of the Priſoner, into Court.

Whereupon the Governor, or Deputy-Governor, brings the Priſoner to the Bar, the Axe being carried before him by the Gentleman-Jailor of the *Tower*, who is to ſtand with it at the Bar, on the Right Hand of the Priſoner, turning the Edge from him.

The Priſoner, at his Approach to the Bar, is to make three Reverences, one to His Grace the Lord High Steward, the other two to the Peers on each Hand, and His Grace and all the Peers are to return the Salute to him. And the Black Rod is to mind the Priſoner that he kneel, 'till His Grace bids him ariſe, in caſe the Priſoner do it not of himſelf.

His Grace, the Lord High Steward (that he may the better hear, and be heard) may, with Leave of the Peers, come down upon the Woolſack, and may deliver his White Staff to the Black Rod, who is to hold it by him upright. And then the Serjeants at Arms may unſhoulder their Maces.

Then His Grace may give ſuch Directions to the Priſoner, and to the Counſel at the Bar, as he thinks convenient, touching the Trial; and then may addreſs himſelf more particularly to the Priſoner, touching the Crime for which he ſtands Indicted.

After which, the Clerk of the Crown, by His Grace's Command, is to read the Indictment, to which the Priſoner is to plead, and (if he plead Not Guilty) is to put himſelf on his Trial by God and his Peers.

Then the Judges, with Conſent of the Peers, at the Motion of His Grace the Lord High Steward, may put on their Caps.

And Proclamation being made for the King's Evidence to come forth, the King's Counſel, by His Grace's Direction, are to begin to open the Indictment, and to proceed to the Trial.

If any Queſtion, ariſe during the Trial, that the Lords are minded to debate in their own Houſe, the Court is to be adjourned by His Grace the Lord High Steward to the Houſe of Peers; and the Manner of going thither, and returning again to the Court, is to be much in the ſame Order as at the firſt coming into the Court; His Grace carrying his White Staff to the Door of the Houſe of Lords, and there delivering it to the Black Rod to hold, 'till the Court return.

Upon any Intervals during the Trial, the Lord High Steward may have Wine and Biſkets preſented him on the Knee; and the Judges and Officers attending, may alſo have Wine and Biſkets.

If the Trial laſt more Days than one, the Biſhops are at their Election whether they will be preſent after the firſt Day.

Every Day during the Trial, the Lord High Steward is to be attended to his Houſe by Garter and the Black Rod, *&c.* as he came at firſt; ſave that the Judges do not attend His Grace Home: And that if His Grace have four Coaches of Attendants, two of them go before him, and two of them after him. And Garter, the Black Rod, and Serjeant, every Evening during the Trial (after the Black Rod has delivered the White Staff to His Grace, at the alighting out of his Coach) attend His Grace up Stairs, His Grace entertaining them at his own Table at Supper, each Day of the Trial.

But every Morning during the Trial (if it laſt more than one Day), the Judges, with Garter, the Seal-Bearer, the Black Rod, and Serjeant, attend His Grace at his Houſe, and thence to the Houſe of Lords, (to which Place the Court is always adjourned every Night) as on the firſt Day, the Black Rod delivering the Staff to His Grace at the Foot of the Steps going up to the Houſe of Lords, and receiving it again from His Grace at the Door of the Houſe of Lords.

The Trial being over (which ſometimes laſts four or five Days), the Priſoner being withdrawn, His Grace the Lord High Steward is to put the Queſtion, Whether the Priſoner is Guilty of the Crime whereof he ſtands Indicted, or Not Guilty? Aſking the Lords ſeverally, beginning with the youngeſt Baron, and writing down their Anſwers; and laſtly delivering his own Opinion. Every Peer upon pronouncing his Judgment, ſtanding up uncovered, and laying his Right Hand on his Breaſt, and ſaying, Guilty (or Not Guilty), upon my Honour.

Then His Grace is to declare to the Peers how many have pronounced the Priſoner Guilty, and how many not Guilty.

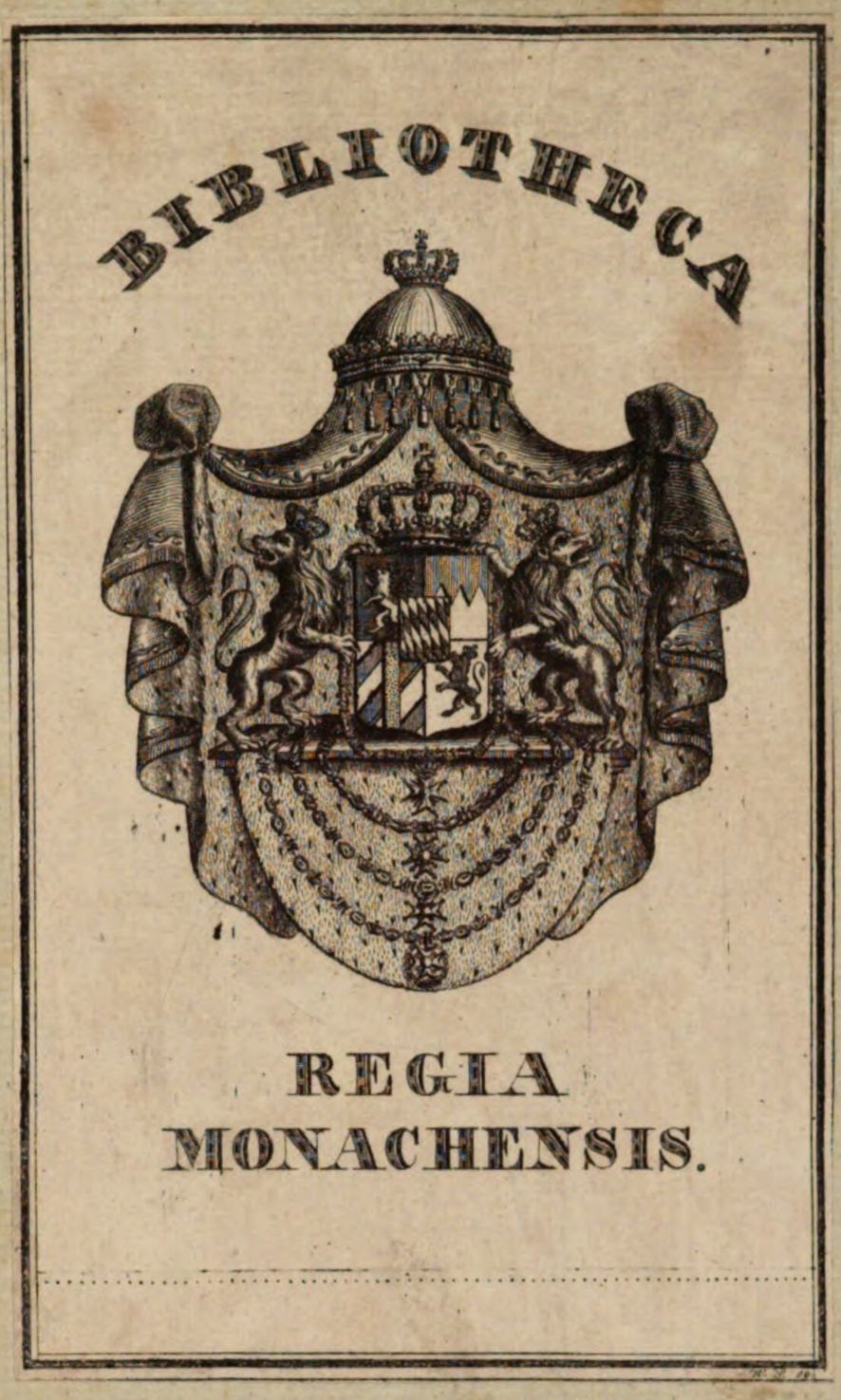
After which, the Priſoner being again brought to the Bar, and Proclamation made for Silence, His Grace declares to the Priſoner the Judgment of the Peers, and then commands Proclamation for diſſolving the Commiſſion.

The Proclamation ended, His Grace ſtands up, and having received the White Staff from Garter and the Black Rod jointly, (as His Grace always does, when he receives in Court) His Grace holding the White Staff in both his Hands, breaks it in two, and ſo diſſolves the Commiſſion.

Then the Lord Chancellor, or Speaker, demands the Pleaſure of the Peers, whether they will then adjourn to the Houſe of Lords; and if ſo, then they return thither in the former Order (except as to the White Staff). But if they do not adjourn thither at that Time, Garter, and the Black Rod, attend the Lord High Steward to his Coach, and ſo to his Houſe, and then the Seal-Bearer and Black Rod change Places.

END OF THE EIGHTH VOLUME.

BAYERISCHE STAATS-BIBLIOTHEK MÜNCHEN


BIBLIOTHECA
REGIA
MONACHENSIS.